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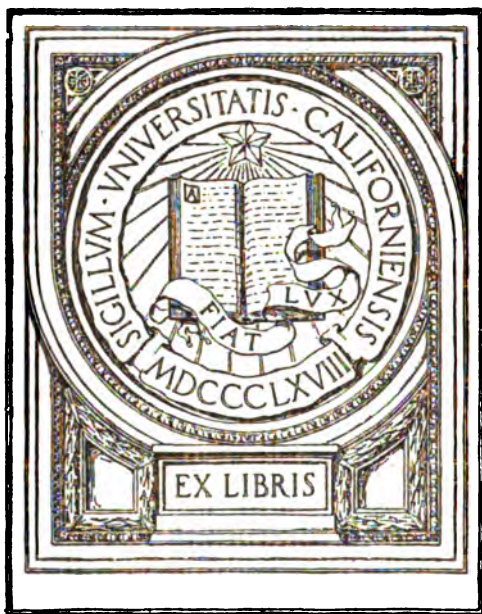
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1911

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REPORT

OF THE

JOINT COMMITTEE *NEW YORK* OF
THE STATE

OF THE

SENATE AND ASSEMBLY

OF THE STATE OF NEW YORK *assembly*
" " " *Documents*

APPOINTED TO INVESTIGATE CORRUPT PRACTICES
IN CONNECTION WITH LEGISLATION, AND
THE AFFAIRS OF INSURANCE COMPANIES
OTHER THAN THOSE DOING LIFE
INSURANCE BUSINESS

VOLUME I

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STATE OF NEW YORK

No. 80.

UNIV. OF
CALIFORNIA

IN ASSEMBLY

February 1, 1911.

**REPORT OF THE JOINT COMMITTEE OF THE SENATE AND
ASSEMBLY OF THE STATE OF NEW YORK, APPOINTED
TO INVESTIGATE CORRUPT PRACTICES IN CONNECTION
WITH LEGISLATION, AND THE AFFAIRS OF INSURANCE
COMPANIES, OTHER THAN THOSE DOING LIFE INSURANCE
BUSINESS.**

To the Senate and Assembly:

The Joint Committee of the Senate and Assembly, appointed pursuant to a concurrent resolution adopted the 24th day of May, 1910, submit the following report:

The resolution directed the Committee

“To investigate as speedily as possible, all corruption and corrupt practices shown to exist by the evidence of the recent investigation had before the Senate of the state of New York; all matters indicating corrupt practices in connection with legislation which have developed in the recent investigation conducted by the Superintendent of Insurance; the business methods, operation, management, supervision and control of all insurance companies other than those doing life insurance business, including fire insurance exchanges and state local boards of fire underwriters and the relations of such companies, exchanges and boards with legislation, including industrial life insurance; any specific charge, veri-

fied upon knowledge of corrupt practices or official misconduct in connection with legislation or the legislature, or with any matter or proceeding before any state department, board, body or officer; and any other matters pertaining to the conduct of the business of the state and its officers which, in the judgment of the committee, warrants investigation, to the end that such remedial legislation may be enacted or changed or method in the conduct of public business may be adopted as will prevent a recurrence of any abuse or evils disclosed."

The Committee organized on the 8th day of July, 1910, and selected HON. EDWIN A. MERRITT, JR., Chairman; HON. ALEXANDER BROUGH, Vice-Chairman; WALTER E. MOSES, Secretary; CHARLES R. HOTALING, Sergeant-at-Arms; GEORGE M. SHOTWELL, Official Stenographer; and employed M. LINN BRUCE, as Counsel-in-Chief, and subsequently ALFRED HURRELL and ISIDOR J. KRESEL were retained as Assistant Counsel; PROF. ALBERT W. WHITNEY, as Actuary, and L. H. CONANT and MARVYN SOUDDER, as Accountants.

It began its hearings on September 27, 1910, and closed them on January 6, 1911, holding during this period public sessions on forty-two days, at which testimony was taken. These sessions were all held at the City Hall in the city of New York, except the session of October 21, 1910, which was held at the State prison, at Ossining, for the purpose of examining a witness confined in that institution. One hundred and eighty-four witnesses were called before the Committee and examined and 5,500 pages of oral evidence and 1,500 pages of documentary evidence received.

The Committee endeavored to take up the subjects which it was directed to investigate, in the order in which they were set forth in the resolution, but found it impossible to adhere at all times strictly to this order on account of the absence of witnesses.

Although its work was arduous and continuous, it was found impossible to take up all the subjects mentioned in the resolution.

In considering the subject of insurance, the Committee was compelled, for lack of time, to confine its investigation to fire insurance, including fire insurance exchanges and boards of underwriters. Moreover, in relation to the subject of industrial insur-

ance the Committee was advised that the Superintendent of Insurance had the subject under investigation and would report thereon.

No definite and substantial charge, verified upon knowledge of corrupt practices or official misconduct in connection with legislation or the Legislature or with any matter or proceeding before any state department, board, body or officer was filed with the Committee.

A digest or detail of the testimony taken cannot be included within the limits of this report. The Committee, however, here endeavors to set forth the salient facts established by the evidence in connection with the different subjects of inquiry, to wit:

1. Matters indicating corrupt practices in connection with legislation developed in an investigation conducted by the Superintendent of Insurance during the spring of 1910.

2. Corruption and corrupt practices shown to exist by the evidence in the investigation had by the Senate during the regular session of 1910.

3. Allegations of corrupt practices in connection with legislation relating to payment by the state of a beet sugar bounty.

4. Allegations of corrupt practices in connection with the anti-race track gambling bills during the regular and special sessions of the Legislature of 1908.

5. Allegations of corrupt practices in connection with amendments to the Agricultural Law, with reference to milk, during the session of 1909.

6. The business methods, operation, management, supervision and control of fire insurance companies, exchanges and state and local boards of fire underwriters.

I.

MATTERS INDICATING CORRUPT PRACTICES IN CONNECTION WITH LEGISLATION DEVELOPED IN THE INVESTIGATION CONDUCTED BY THE SUPERINTENDENT OF INSURANCE, DURING THE SPRING OF 1910.

Between March 18 and April 6, 1910, a public investigation of the expenses of insurance companies from 1900 to 1910, in-

clusive, particularly in connection with legislation, was had by the Superintendent of Insurance. The testimony and exhibits therein, together with the formal report of the Superintendent, were transmitted by the Executive to the Legislature on April 11, 1910.

It appears from the report made by the Superintendent of Insurance, that three loose-leaf ledgers, covering the transactions from 1900 to March, 1905, of the firm of Ellingwood & Cunningham, stockbrokers, operating in New York city, came into the possession of the Superintendent of Insurance; and that an examination of these ledgers developed the existence therein of accounts with several former members of the Legislature, some of whom had been active on the insurance, railroads and rules committees. A partial examination of these accounts, in so far as they appeared in these ledgers, was made by the Superintendent of Insurance," but further inquiry was prevented by objection raised as to the power of the Superintendent of Insurance to proceed further with the investigation.

Prior to the appointment of the Committee, the Superintendent of Insurance had ascertained that the remaining books, papers and records of the firm of Ellingwood & Cunningham were in the possession of Mr. Cunningham, and stored by him in a barn situated in Montclair, in the state of New Jersey. Whereupon the Superintendent of Insurance caused the same to be placed under constant surveillance. Upon the organization of this Committee, the Superintendent of Insurance placed at the disposal of the Committee the evidence taken by him in the investigation conducted by him, together with the loose-leaf ledgers of Ellingwood & Cunningham, and all other documents and papers which he had in his possession.

Immediately upon the organization of the Committee, it undertook the surveillance of the books and papers of the firm of Ellingwood & Cunningham, at Montclair, N. J. These, in the meantime, had been moved to a warehouse. After service of subpoena *duces tecum* upon Mr. Cunningham, thorough examination was made of all of these books and papers, at the warehouse in Montclair. This work consumed several weeks and was attended with many difficulties. The books and papers filled ten large packing

cases, were not indexed or systematically arranged. After the examination was completed, the books and papers found on such examination to be necessary and material to the inquiry were removed to the offices of the Committee, at No. 55 Liberty street, in the city of New York.

On the examination made at Montclair, there were found missing from these records and papers some 40,000 canceled checks of the firm, ten letter books, two stub checkbooks and two blotters, and a deposit book which contained a specific description of each check and draft deposited by the firm after April, 1902, all of which were of the utmost importance to the investigation, and the absence of which seriously hampered the work of the Committee and increased its difficulties. The whereabouts of these books and papers, or the time of their abstraction, the Committee was unable to determine.

An examination of the records which remained, together with an examination of Mr. Cunningham, Mr. G. Tracy Rogers and several former employees of the firm, established the following:

First.—The firm of Ellingwood & Cunningham was formed in 1893 for the purpose of doing a general brokerage business, having offices at No. 41 Wall street, New York city. It was composed of C. H. Ellingwood and James W. Cunningham, until the year 1900, when G. Tracy Rogers was admitted as a special partner on his investment of \$100,000 cash in the firm. In October, 1902, Mr. Ellingwood retired from the firm and in January, 1905, Mr. Rogers retired. Whereupon Mr. F. M. Black, one of the clerks of the firm, became a general partner. Some six weeks thereafter the firm made an assignment for the benefit of its creditors. Subsequently an involuntary petition in bankruptcy was filed against the firm in the United States District Court for the Southern District of New York, which was withdrawn some sixty days later, after a settlement had been made by the firm with its creditors.

Second.—During the time G. Tracy Rogers was a special partner, several members of the Legislature and other persons interested in legislative affairs had accounts with the firm. Many of these accounts appeared regular in all respects and contained no unusual items which called for explanation. Others, to which

reference is hereafter made, were evidently carried primarily not for the purpose of dealing in stocks and securities, but for the purpose of facilitating and concealing the transfer of moneys to the legislators in whose names the accounts stood.

Third.—At the time G. Tracy Rogers became a special partner, he was the president of the Street Railway Association of the state of New York, an association organized in 1883, and still in existence, the ostensible purpose of which was the acquisition of experimental, statistical and scientific knowledge relating to the construction, equipment and operation of street railroads and the diffusion of this knowledge among the members of the association. The membership of this association comprised nearly all the important street railway companies within the state, together with certain associate and allied members consisting of individuals, co-partnerships and corporations, engaged in the manufacture, selling and dealing in railway supplies and materials. Mr. Rogers continued as president of this association from 1894 until 1903.

Fourth.—During Mr. Roger's incumbency of the office of president of the association, he represented it at Albany during the sessions of the Legislature in matters of legislation affecting its members. Shortly after he became president, upon his suggestion and with the approval of the executive committee a system was inaugurated of levying assessments upon the various railroad companies which were members of the association in proportion to their gross earnings, to raise funds with which to promote the interests of these members of the association in matters of legislation. At first these assessments were fixed at one-tenth of one mill upon the gross earnings. Later this was raised to two-tenths of one mill, and, in addition thereto, from time to time, as, in the judgment of the president, exigencies required, special assessments were laid on the members for the purpose of raising additional funds. Many of the books and records of the association, including minutes of the secretary, records of the treasurer, and correspondence of its officers have been lost or destroyed. The officers testified that they were unable to produce them, and were ignorant of the cause or manner of their disappearance. On account of the loss of these records, the exact amount contributed

by the members of the association to this fund cannot be ascertained, but that it was large appears from the fact that during the months of June and July, 1903, \$25,000 was forwarded to Ellingwood & Cunningham and by them placed to the credit of legislators.

Fifth.—The distribution of this fund was wholly under the control of the president of the association and he was not called upon at any time to account, either to the executive committee or to the association, for the manner of its use. There were three methods used in transferring these funds, namely:

a. By depositing from time to time with the firm of Ellingwood & Cunningham sums of money directly to the credit of these members of the Legislature, which sums were subsequently either withdrawn by them, or used by them for the purpose of trading in stocks and bonds.

b. By depositing from time to time with the firm of Ellingwood & Cunningham to the credit of a confidential clerk of the firm, sums of money which were subsequently transferred to the accounts of these legislators.

c. By making contributions directly to the campaign funds of the political parties in the districts represented by these members of the Legislature, and to the funds of the state committee of the dominant parties.

Sixth.—Henry A. Robinson, attorney for the Metropolitan Street Railway Company of New York, was the secretary and treasurer of the association from 1894 to June, 1903. In June, 1903, Robinson resigned as treasurer and the executive committee of the association selected a new treasurer to act until the annual election of officers in October of that year. In October, 1903, an entirely new set of officers were elected by the association and a new policy adopted, at least temporarily. The levying of assessments was apparently abandoned. This change of policy was evidently a matter of "policy," since the evidence shows that the collection of the unpaid assessments continued.

Various methods were resorted to by the treasurer and the members of the association to cover up these assessments, and among others may be noted, the assessment of \$8,000, collected in

July, 1903, from the Metropolitan Street Railway Company on behalf of the Third Avenue Railway Company. The evidence shows that in order to conceal the real nature of the transfer of \$8,000 of the moneys of the Third Avenue Railway Company for legislative purposes, the following ingenious and despicable method was adopted: A voucher and draft for this amount was drawn to the order of the treasurer of the Street Railway Association, as attorney, in settlement of a fictitious claim for personal injuries to one Charles Lankeman. It recited upon the face of the voucher that the injuries were received by Lankeman "On May 1st, 1902, at 99th Street and Third Avenue, on car 247, run 70, trip No. 1, north-bound: that the claimant, a passenger on the car, was standing on the rear platform: that the car came to a stop at 99th Street and started with a sudden jerk, throwing the claimant from the rear of the car to the street, which resulted in injuries to his back and spine, shock and concussion."

The treasurer of the Street Railway Association indorsed this draft *as attorney* and also indorsed it *as treasurer of the association*, and deposited it to his credit as treasurer, and it was paid in due course. Later this money found its way into these accounts carried by Ellingwood & Cunningham.

The treasurer of the Street Railway Association testified that he never knew Mr. Lankeman, and never had heard of any such person, or accident, that he was not an attorney-at-law, nor was he the attorney-in-fact for Mr. Lankeman, and knew nothing about any such accident. An examination of the officers of the company failed to reveal that any such accident had ever occurred or that there was any such person as Mr. Lankeman. This was evidently a mere invention and subterfuge for the purpose of concealing the transfer of this \$8,000 by the Metropolitan Street Railway Company to the treasurer of the association for legislative purposes.

The surviving records of the association were so meagre and fragmentary and the disappearance of the great bulk of them so extraordinary and inexplicable as to raise a grave suspicion that similar methods may have been resorted to at other times.

It would seem that in deference to the new order of affairs in

matters of legislation and public service, the association, in 1904, permanently abandoned the methods which it had followed in matters of legislation.

Seventh.—On the 16th day of March, 1900, a bill was introduced in the Senate, entitled:

“An Act to amend the Transportation Corporation Law by addition thereto of a section in relation to extending roads and extensions.”

This bill passed the Senate on March 29, 1900. . On the date of its passage it was transmitted to the Assembly and was immediately reported by the committee on rules, and passed by the Assembly on April 5, 1900, the day before the final adjournment of the Legislature. It subsequently became a law and constitutes chapter 567 of the Laws of 1900. Under this act it became possible for the New York Transportation Company, a public service corporation, operating in the city of New York, to greatly extend its franchise.

It appears from the books of Ellingwood & Cunningham, that prior to the passage of this act and shortly thereafter several members of the Legislature, some of whom were members of the committee on railroads and of the committee on rules, came into the possession of a large amount of stock of this company. These blocks of stock so held were at least in two instances purchased through Ellingwood & Cunningham and paid for by Rogers with the proceeds of a check received from the president of the Metropolitan Street Railway Company. In other cases, the stock was deposited by members of the Legislature with Ellingwood & Cunningham and carried by them until May, 1901, when a pool of 1,400 shares, made up of the holdings of various members of the Legislature and other persons connected therewith, were delivered to a member of the committee on railroads of the Senate and by him sold to an unknown purchaser at 14, at a time when the same stock was selling in the open market at $4\frac{1}{2}$, and the following month sold down to $1\frac{1}{4}$.

This bill, though general in its character, could possibly affect no corporation except the New York Transportation Company. It was introduced by a Senator who represented no part of the

territory in which this corporation operated. He testified that it was handed to him by a Senator also representing a district wholly without the territory in which this company operated; that he neither asked nor received from the Senator who gave it to him any statement or explanation as to its provisions or the source from which it came.

Eighth.—The evidence shows that between April, 1900, and March, 1903, the account of the chairman of the committee on railroads in the Assembly during those years was credited upon the books of Ellingwood & Cunningham with the sum of \$24,281, none of which came from him directly, but all of which was contributed either by checks of the president or attorney of the Metropolitan Street Railway Company or the treasurer of the Street Railway Association, or by the checks of the president of the Street Railway Association.

The evidence also shows that the account of a member of the committee on railroads of the Senate was credited on the books of the firm of Ellingwood & Cunningham, between April, 1900, and July, 1904, with \$24,800, all of which came through checks of the president of the Metropolitan Street Railway Company or the attorney of said company or the treasurer or president of the Street Railway Association.

The explanation of these accounts given by the persons in whose names they were carried and by Rogers, were that these transfers were made by Rogers either in payment of his personal indebtedness to them or as political contributions, and that they had no knowledge of the sources from which he obtained the money.

It is apparent that the firm of Ellingwood & Cunningham was used during these years by Rogers; acting for the Street Railway Association, as a clearing house through which to transfer money from the treasuries of the various railroads belonging to the association to the individual accounts of certain members of the Legislature and political organizations, whom they deemed useful in the protection and promotion of their interests in matters of legislation.

II.

CORRUPTION AND CORRUPT PRACTICES SHOWN TO EXIST BY THE EVIDENCE IN THE INVESTIGATION HAD BY THE SENATE DURING THE REGULAR SESSION OF 1910.

An examination of the evidence received in the investigation had before the Senate during the regular session of 1910 shows that all matters therein developed indicating corrupt practices were fully explored either upon the direct or cross-examinations of the witnesses, save the allegations with reference to alleged irregularities in the purchase of State lands, which was made the subject of special investigation by the Executive.

The chief prosecuting witness before the Senate was examined at length by the Committee and his examination, although exhaustive, elicited no facts indicating corrupt practices other than those concerning which he had testified before the Senate. At the close of his examination he stated that he had no knowledge of any other corrupt practices in connection with legislation or public officials.

Some additional facts, however, were developed by the examination of this and other witnesses, concerning the attempt made in 1905 by certain bridge companies doing business in this state to raise by assessment a fund of \$10,000 for the purpose of influencing legislation. It appears that a meeting of the representatives of these companies was held at Syracuse, in January, 1905. After considerable discussion they decided to raise a fund of \$10,000 for this purpose. A custodian of the fund was appointed and the sum of \$1,950 paid in. The scheme was subsequently abandoned on account of the failure of some of the companies to pay their assessments, and the money raised was returned to the contributors.

III.

ALLEGATION OF CORRUPT PRACTICES IN CONNECTION WITH LEGISLATION RELATING TO THE PAYMENT BY THE STATE OF A BEET SUGAR BOUNTY.

On the 3d day of August, 1910, at a hearing held at Geneva, N. Y., before Charles A. Hawley, Esq., Referee in Bankruptcy,

in a proceeding against the Lyons Beet Sugar Refining Company, a corporation formerly engaged in the manufacture of beet sugar at Lyons, in the state of New York, Harry F. Zimmerlin testified that in the years 1905 and 1906 he paid to two members of the Legislature, on behalf of the company, certain sums of money in consideration of their action, at the sessions of the Legislature for those years, upon matters of legislation affecting the beet sugar industry.

This fact having come to the attention of the Committee, a thorough investigation of the evidence and proceedings had in bankruptcy, together with the books, records and correspondence of the company was made. The book-keeper and treasurer of the company, together with its former presidents, were examined.

It appears from the evidence of Zimmerlin that for several years the company employed him to attend the sessions of the Legislature to promote legislation giving a bounty for the production of beet sugar in this state.

He testified that shortly after the adjournment of the Legislature in 1905, he paid, at the Capitol, \$3,000 in cash to a member of the Senate, and \$3,000 to a member of the Assembly, of which latter amount \$1,500 was for the member's use and the other \$1,500 was "to use as he saw fit." This money, he stated, he had received from the president of the company for this purpose. On the morning following the day when he gave this evidence, he asked leave to correct this testimony, stating that he then recollected that the amount which he paid to the member of the Assembly was \$1,500 instead of \$3,000. He further testified that after the session of 1906 and also after the session of 1907, at which sessions similar appropriations were made, he paid the same member of the Senate \$3,000 each year, and that he also paid an employee of the Assembly the sum of \$300, in 1905, and in 1906, \$250.

Frederick Steigerwald, who was the president of the company during these years, was examined and testified that after the adjournment of the Legislature in 1905, 1906 and 1907, Zimmerlin requested of him these sums of money for the purpose of payment to the members of the Senate and the Assembly mentioned by him, and that in response thereto he delivered to him

for that purpose in the years 1905, 1906 and 1907 drafts for the sums mentioned.

A searching examination of the books and records of the company, together with an exhaustive examination of the witnesses called before your Committee, failed to elicit any corroborative evidence. The evidence of Zimmerlin, who testified as to these alleged payments, was singularly incomplete with reference to the details of each of the transactions. He could not recollect any material extrinsic circumstances or facts surrounding them. Moreover, the evidence reveals that notwithstanding appropriations had been made for this purpose at each annual session of the Legislature from 1897 to and including the session of 1908, no other suggestions relative to payments in other years were ever made, although Zimmerlin testified that he was present at Albany actively promoting similar legislation in each of the years mentioned, during which time the members accused were members of the Legislature.

The Committee is impressed with the significance of the fact that each of the legislators to whom it was alleged payments were made is dead, and unable to face his accuser.

In the absence of corroborative evidence and in view of the appearance of the witness Zimmerlin upon the stand, his manner of testifying, and his very apparent confusion of mind, the Committee cannot conclude or report that these payments were made to the members as alleged.

IV.

ALLEGATION OF CORRUPT PRACTICES IN CONNECTION WITH THE ANTI-RACE TRACK GAMBLING BILLS DURING THE REGULAR AND SPECIAL SESSIONS OF THE LEGISLATURE OF 1908.

The wide-spread publication in the public press of rumors and assertions that a corruption fund amounting to several hundreds of thousands of dollars had been raised for the purpose of preventing the passage of the anti-race track gambling bills, pending at the regular and extraordinary sessions of the Legislature in 1908, together with admissions made by persons active in opposition to these bills which were brought to the attention of the Com-

mittee, led it to enter upon an investigation of the truth of these rumors and accusations.

In the course of this investigation it called and examined all persons whom it was believed had any knowledge or information upon the subject and also caused to be examined the books and records of various racing associations in the state of New York, together with the books and records of the Metropolitan Turf Association.

The evidence shows that in 1908 one Frank J. Gardner was a lobbyist at Albany, and that he was retained to attempt the defeat of the anti-race track gambling bills. It further appeared that Gardner and certain other persons associated with him established themselves in a hotel in Albany and either directly or through others approached a number of legislators with offers of large sums of money in consideration of their voting against the passage of these bills. The Committee has been unable to definitely fix the amount of money at the disposal of Gardner and his associates, but it appears in the evidence, that Gardner offered to one legislator as a consideration for his vote against the bills, the sum of \$100,000.

When the Committee entered upon the investigation of this matter, it discovered that Gardner was without the state, and, therefore, beyond the reach of a subpoena. The Committee located him in a city in a sister state, and, when it ascertained that he would not return voluntarily to the state, it gave the district attorney of the county of New York sworn information which resulted in the indictment of Gardner in the county of New York, for the crime of attempted bribery.

The district attorney at once caused Gardner's apprehension in the foreign jurisdiction where he then was and instituted extradition proceedings, but, before such proceedings were terminated, Gardner voluntarily returned to the county of New York, where he was arraigned and admitted to bail. The Committee immediately caused a subpoena to be served upon Gardner, directing him to appear before it. He appeared, was sworn, but refused to give any testimony on the ground that he was then under indictment, and that any evidence he gave might tend to incriminate or degrade him. Under these circumstances the Committee pro-

ceeded to examine other witnesses whom it was informed had knowledge of Gardner's activities in Albany in connection with the attempt to defeat these measures.

It had come to the attention of the Committee, that in the spring of 1910, while Robert H. Elder, Esq., an assistant district attorney in the county of Kings, was making an investigation relative to the prosecution of certain indictments which had been found by the grand jury of the county of Kings, that Gardner had admitted to Mr. Elder that he was actively engaged in Albany in 1908 in endeavoring to prevent the passage of the anti-race track gambling bills.

Mr. Elder was called to give evidence of these admissions of Gardner. He testified that in March, 1910, Gardner had stated to him that during the pendency of these bills a meeting was held in the city of New York, at which various persons interested in racing and representatives of the Metropolitan Turf Association were present, and that a fund was then subscribed aggregating several hundred thousands of dollars for the purpose of preventing the passage of these bills; that \$10,000 was paid to one legislator for his vote and large sums of money were disbursed to other persons for the purpose of bringing about the defeat of the measures.

It also appears from testimony given by other witnesses that Gardner was in Albany during the pendency of these measures before the Legislature; that he approached several members thereof with offers of money in consideration of their votes against the measures and sought to induce other legislators to meet him at his room in the hotel where he was making his headquarters. It further appeared that he exhibited in his hotel a large sum of money, which, he said, was to be used to secure votes against the bill.

Gardner, in the admissions made by him to Mr. Elder, mentioned the names of several legislative correspondents, of the public press and others, to whom, he said, sums of money had been paid. This evidence was not corroborated and in each instance these persons appeared voluntarily before the committee and denied *in toto* the truth of this statement.

The Committee sought to examine each of the persons whom Gardner stated were present at the meeting held in New York

when the fund for the purpose of preventing the passage of these measures was said to have been subscribed, but by reason of their having left the jurisdiction of your Committee, and their continued absence therefrom when their presence was desired, and their failure to return up to the time your Committee's power to call and examine witnesses expired, it was unable to obtain their evidence.

There is also evidence tending to show that other attempts were made to induce members of the Legislature to vote against these measures, and that as much as \$45,000 was offered one member of the Senate in consideration of his either opposing the bills or refraining to vote in favor thereof, and upon his refusal a threat was made that he would not be renominated at the ensuing election.

The Committee examined the books and records and some of the officers of the Jockey Club, and of the various racing associations in the state. The evidence shows that these organizations in their opposition to these bills expended large sums for publicity in order to create public opinion in opposition to the measures. It appears that one of the eight racing associations expended some \$17,000 for the purpose. The aggregate legal expenses of these bodies in 1908 amounted to about \$162,000. There is no evidence, however, that any of these expenditures were for illegal purposes.

The Committee endeavored to examine the officers of the Metropolitan Turf Association and its books and records, but the only officer of the association which your Committee could reach with subpoena was the treasurer, who testified that all the books and records of the financial dealings of the association that were ever kept had been destroyed with the exception of a single check-book.

V.

ALLEGATION OF CORRUPT PRACTICES IN CONNECTION WITH AMENDMENTS TO THE AGRICULTURAL LAW WITH REFERENCE TO MILK DURING THE SESSION OF 1909.

The Committee's attention was called to the fact that in a proceeding pending in the Supreme Court of the County of New York, entitled "In the Matter of the Petition of Edward R.

O'Malley, Attorney-General of the State of New York, for an order directing Charles H. C. Beakes and others to appear before a referee for examination pursuant to article 22, chapter 20, of the Consolidated Laws of the State of New York, known as the General Business Law," conducted during the months of January and February, 1910, certain testimony had been given tending to show that a fund of money had been raised by milk dealers operating in Greater New York, for the purpose of opposing the enactment into law of an amendment to the Agricultural Law of this state, which was subsequently passed and became chapter 9 of the Laws of 1909, providing, in brief, that milk and cream should contain 12 per cent. solids and that the production, sale and distribution of milk and cream should be subject to certain State inspection.

An investigation into these allegations was made, witnesses examined, and an effort made to examine the books and documents of certain milk dealers' associations. It appeared that prior to October 1, 1909, there was in existence an incorporated organization called the Milk Dealers' Protective Association, which numbered among its members about twenty-five wholesale milk dealers in the city of New York. The evidence also showed that about October 1, 1909, three other milk dealers' associations were formed, to wit: The Harlem and Bronx Milk Dealers' Association, the Brooklyn Milk Dealers' Association, and the West Side Milk Dealers' Association, the members of which associations were likewise wholesale milk dealers operating in Greater New York.

When the Committee sought to examine the books and records of the Milk Dealers' Protective Association it was found that it could not obtain the books and records of that association antedating October 1, 1909, and the secretary of that association testified that such books and records had been destroyed by him.

From such books and records, however, as were produced, it was made to appear that during the years 1909 and 1910 these four milk dealers' associations levied upon their members assessments ranging from twenty-five to fifty cents for each can of milk sold by each member on a certain day, and by that method there was raised about \$10,000. It was further developed that more than

one-half of this amount remains in the hands of the officers of that association and that the balance had been expended for defraying the expenses of collecting lost cans belonging to members of the association and in conducting analyses of milk distributed in this territory.

The evidence given and such records as the secretary of the association did not destroy, does not show that any of this money so collected by assessments or any other money has been used corruptly in any attempt either to oppose or promote the passing of the amendment to the Agricultural Law above mentioned, or any other law pending before the Legislature.

Numerous allegations and rumors, anonymous and otherwise, of corrupt practices in connection with other matters of legislation, came to the attention of the Committee, and considerable time of the counsel and other assistants of the Committee was consumed in endeavoring to ascertain whether or not there was any substantial evidence in support of these allegations and rumors.

The investigation shows clearly the extreme difficulty of securing exact information which will disclose the methods by which powerful financial interests seek to control legislative action in matters coming before legislative bodies.

The crime of bribery is one of the most difficult of all crimes to uncover. All the resources of ingenuity are used to conceal it, and only in exceedingly rare instances are either of the parties to the crime willing to come forward and disclose the facts.

The statute requiring corporations and associations doing business in the state to file with the Secretary of State itemized annual statements duly verified, showing in detail all expenses paid and incurred in connection with legislation pending at the previous session of the Legislature, including disbursements or compensation paid or payable to counsel or agents, although not always complied with, has undoubtedly been a powerful influence in correcting conditions which may have existed in the past. The statute has produced a degree of publicity which did not exist previous to its enactment, and it is to publicity more than to anything else that the public must look for the prevention of conditions directly encouraging improper relations between members

of legislative bodies and financial interests which may be affected by legislative action.

Legislative procedure, so far as the state of New York is concerned, is improving. It is more deliberate, and the records of legislative proceedings in committee and otherwise are more carefully made and preserved. The recent revision of the Rules of the Senate and Assembly are steps in the right direction, and in view of these amendments your Committee makes no suggestions at this time.

The evidence before the Committee satisfies it that legislative methods and conditions have greatly improved, and it believes that an aroused and enlightened public sentiment will result in further advances in the adoption of other and further measures tending to minimize the opportunity of outside interference in legislative procedure.

The establishment of the Public Service Commission and the giving to various departments of State government a larger control of public institutions and activities has decreased measurably the field of operations of the lobbyist. An opportunity is now given to all parties interested in the administration of public business for impartial and deliberate consideration of their rights, interests and obligations. Questions of importance receive a degree of consideration which is impossible for them to have in the somewhat hasty deliberations of legislative bodies. All proceedings become a matter of permanent record, and whether before a public service commission or some other department of State government, subjects in which the public is interested and their relations to public and private interests are given a degree of careful consideration very similar to that which takes place in courts of justice and to some degree under rules similar to those governing the action of our courts.

In concluding its report on this branch of the investigation, the Committee suggests that the most effective preventative of legislative corruption rests with the people themselves — a searching scrutiny of the fitness of candidates and a strict accountability of representatives to their constituents.

In view of the facts established by the evidence the Committee recommends that article 124 of the Penal Law be amended by the addition of a new section providing that if a member of either House composing the Legislature of this state shall be offered a bribe, or any money, property or value of any kind, in consideration of his vote, or of his absenting himself from the House of which he is a member, or from any committee thereof, or if any person shall attempt, directly or indirectly, by menace, deceit, suppression of truth or other corrupt means, to influence a member to give or withhold his vote or to absent himself from the House of which he is a member or from any committee thereof, such member shall immediately, if the House of which he is a member be in session, or at the next session thereof, submit the facts in relation thereto to the House of which he is a member, and to the district attorney of the county in which the offer or promise was made, and that a violation thereof shall be punishable by imprisonment for not more than ten years or by a fine of not more than \$5,000, or both, together with a forfeiture of his office, and disqualification from ever afterward holding any office under this state.

FIRE INSURANCE.

PART I.

INTRODUCTION AND GENERAL OUTLINE OF THE BUSINESS.

INTRODUCTION.

The investigation which was made by the Superintendent of Insurance in the spring of 1910 concerning the legislative activities of fire insurance companies brought into prominence the fact that the companies were strongly against certain bills which are proposed at nearly every session of the Legislature; these are commonly known as "anti-compact" and "valued policy" bills.

When this Committee was created by the Legislature and directed, among other things, to investigate the subject of fire insurance it was very largely in the hope that these questions could be thoroughly studied and that conclusive grounds could be found either for passing such measures or for rejecting them.

Both for this reason and because of the great importance of fire insurance to citizens of all classes your Committee gave a great deal of careful attention to this side of the inquiry.

The public hearings on fire insurance began on the 22d day of November, 1910, and ended on the 6th day of January, 1911. Altogether, 117 witnesses were examined, representing all the interests involved,—the premium payers—the insured, officers and managers of companies, mutual fire insurance underwriters, managers of rating bureaus, expert raters, adjusters, statisticians, local agents, brokers, interinsurers, attorneys-in-fact for Lloyds, New York State Insurance Department officials, insurance commissioners of other states, fire department officials, officers and members of fire prevention associations, merchants, officers of trade organizations and others. Leading men in their special lines the country over were examined and conditions in New York state were thus compared with those existing in Massachusetts, Rhode Island, Pennsylvania, Ohio, Illinois, Missouri, Wisconsin, Texas and Michigan.

In considering the proper scope of this inquiry the Committee first satisfied itself that the Superintendent of Insurance and his

corps of examiners had brought before the public all matters pertaining to fire insurance legislation, which gave evidence of or tended to establish any improper attitude on the part of the companies toward legislation. The record of the testimony taken before the Superintendent of Insurance is voluminous and shows that this phase of the question was treated exhaustively. It was, therefore, deemed of more public importance to direct the Committee's inquiry toward the economic problems of the business.

It may be said at the outset that the subject of fire insurance differs from that of life insurance, concerning which an exhaustive legislative investigation has been had in recent years, in one very important particular. In life insurance, because of the fact that the contract stretches over a great number of years and that the premiums in the early years of the policy must be largely laid aside against the later years, it is necessary to collect a very large reserve. The records of the Insurance Department show that in each of the three large New York life insurance corporations the reserve amounts to more than four hundred million dollars. In fire insurance, however, as the contract is made from year to year, or at any rate for a very short term, the entire reserve is small in comparison, amounting on all of the 163 stock companies doing business in this state to only about two hundred and thirty-three million dollars—hardly more than half the reserve of a single one of the life insurance companies. The temptation to use the large funds at its disposal in a questionable manner, which was shown to have been, at the time of the investigation, one of the weak points in the system of life insurance, does not exist in fire insurance, for the reason that the large funds do not exist.

The Committee, recognizing the technical character of the subject and the desirability that it should be presented in a logical and consecutive manner, attempted, so far as it was possible, to take up its details according to the following plan:

The companies and their relation to the State—State supervision.

Statistics regarding the amount and character of the fire insurance business.

The organizations among the companies.

The principles involved in the furnishing of fire insurance indemnity.

The interior organization of a company — its officers and agents.

The actual detailed work of a company — getting and doing business.

The settlement of losses — adjusting.

The theory of rating.

Rating organizations.

The New York Fire Insurance Exchange.

The Suburban Fire Insurance Exchange.

The Underwriters' Association of New York State — the Upstate Association.

Factory Mutual Insurance Companies.

Miscellaneous Mutual Insurance Companies.

Town and County Co-operative Insurance Companies.

Interinsurance Associations.

Lloyds.

Local agents and their problems — the expense problem.

Brokers.

Complaints by the insured and the answers thereto by the companies.

Fire prevention.

The problems of the business, so far as they concern the State, are mostly in regard to the so-called stock fire insurance companies, and not only that but they are largely concerned with the subject of rating and expense. In this report the discussion of the matters concerning which testimony was received will be made to center around these problems. In Part I of this report will be given an outline of the business and in Part II a more careful analysis of the problems involved.

EXTENT OF THE BUSINESS.

It is impossible to know exactly the magnitude of the fire insurance business. The following figures, however, are suggestive:

One hundred and sixty-three stock companies, licensed to do business in this state, had risks in the United States on December 31, 1900, aggregating over forty billions of dollars; on these

during 1909, they received net premiums amounting to about two hundred and seventy-one millions of dollars.

Besides these companies there are other stock companies, not admitted to this state, mutual companies, interinsurers and Lloyds, which must bring the total amount at risk in this country well up toward fifty billions of dollars.

IMPORTANCE OF FIRE INSURANCE.

The importance of the business of fire insurance can be inferred from the fact that the annual fire loss of this country is in the neighborhood of two hundred and fifty millions of dollars—a destruction equivalent, in relation to the building operations of the country, to a destruction of one house out of about every four that are built. Fire insurance is an agency for distributing this loss over the whole community, so that it shall not deal a crushing blow to those who have suffered. The importance of insurance has, however, gone far beyond the point of being simply a system of distributing loss; it is quite as important because of its *potential* indemnity, that is, because of the state of security which it produces.

It is readily recognized that to-day the financial operations of the world are on a basis of credit. A paralysis of credit produces disastrous results, in panics and financial depressions. The credit system, however, is founded on the institution of insurance; without insurance it would be impossible to get a loan on a cargo of wheat or to mortgage a house or for a retailer to buy on time-payment a bill of goods from a wholesale merchant. Insurance is the foundation of the modern credit system, and by just so much as the welfare of society is founded on the free operation of credit by so much is the institution of insurance of importance to the public, quite aside from its value in actually distributing loss.

ORGANIZATION AND ADMISSION OF INSURANCE COMPANIES.

The Insurance Law of the state of New York provides for the organization in this state, or the admission from other states or countries, of several classes of insurance organizations.

First. So-called stock companies. These are corporations organized to do the business of fire insurance. Such a company of

this state, to be organized, or of other states, to be admitted, must have a capital of at least \$200,000 and a surplus equal to at least 50 per cent. of the capital.

There were on December 31, 1909, 44 such companies of New York state, having a total amount at risk of about eleven and one-half billions of dollars. There were 88 companies of other states, having a total amount at risk of about eighteen billions of dollars.

The 132 stock companies doing business in this state had risks the country over aggregating twenty-nine and one-half billions of dollars, net premium receipts in 1909 of about two hundred millions of dollars, an aggregate capital of about sixty-nine millions of dollars, and aggregate assets of about four hundred and six millions of dollars.

Second. United States branches of foreign companies. Such companies are required to have \$200,000 deposited with State Insurance Departments, and \$300,000 in the hands of trustees in the United States.

There were on December 31, 1909, thirty-one such companies admitted to do business in this state. Their aggregate amount at risk was ten and one-half billions of dollars, their net premium receipts in 1909 about seventy-one millions of dollars, their total assets about one hundred and seven millions of dollars.

Third. On December 31, 1909, there were five mutual companies of this state with an aggregate amount at risk of about twenty-four millions of dollars and aggregate assets of about six hundred and sixty-five thousand dollars. There were two mutual companies of other states with an aggregate amount at risk of one hundred and forty-five millions of dollars and aggregate assets of about two and one-half millions of dollars.

There are at present about 175 town and county co-operative companies of this state. The total amount at risk is not obtainable at present; officers of two companies who appeared as witnesses before the Committee testified that their companies had total risks respectively of seven million dollars and fifteen million dollars.

Fourth. The state to-day permits such Lloyds and interinsurance associations as were organized prior to October, 1892, to do business upon certain conditions specified in article 10 of the In-

insurance Law. In general it may be said that conditions governing these bodies of insurers are similar to those governing stock companies, with the exception that no capital stock or guarantee fund beyond the unearned premium reserve is required.

The Department has recognized seventeen Lloyds associations; on December 31, 1909, these had aggregate risks of one hundred and fifty-two millions of dollars. The state has recognized three interinsurance associations; on December 31, 1909, these had aggregate risks of one hundred and forty-seven millions of dollars.

While these are all the fire insurance organizations which are expressly recognized by this state, it should be added that there is a considerable amount of insurance which is placed with foreign Lloyds and stock companies, not admitted to this state, and with the factory mutual companies.

In addition to the conditions already mentioned the state requires the companies to maintain funds sufficient to cover the unearned portion of the premiums it has received on outstanding business. The purpose of this unearned premium reserve, as it is called, is threefold: first, to make it possible to pay policyholders what is due them should they desire to cancel their policies; second, to secure for the company a sufficient fund to reinsure its business with another company if that should be desirable; and, third, to protect a company against expected losses.

The Superintendent of Insurance is required, as part of the work of seeing that the companies are solvent and otherwise within the requirements of the law, to call for an annual financial statement from each of the companies and associations that are recognized by the Department, and he is directed to examine the affairs of each company in detail from time to time or as occasion demands.

ORGANIZATIONS AMONG THE COMPANIES.

The stock fire insurance companies, while they are in intense competition with each other, have found it desirable to do much of their work through organization among themselves.

THE NATIONAL BOARD OF FIRE UNDERWRITERS.

In point of territory covered the greatest of these is the National Board of Fire Underwriters. The membership of this embraces

124 of the leading companies. It has been in existence since 1866; in its early years it endeavored to fix both rates and commissions for the whole of the United States, but this work proved impracticable and was abandoned. Its principal function to-day is educational, although to a certain extent it exerts a general influence toward uniformity and better practices in the business. It is the representative body which acts for the underwriters in matters of general importance to the companies and the public. The National Board was represented, for instance, at the Joint Conservation Conference in Washington in 1908 and at the National Conservation Congress in St. Paul in 1910; at both meetings the board presented through special committees addresses on the subject of fire-waste.

The board, through a corps of engineers, carries on an extensive work in making surveys of the conflagration hazard in cities. A report is issued on each city surveyed; this report is a basis for intelligent work in the betterment of conditions.

The board, after an extensive study of the subject, has prepared a model building code; the adoption of this code is urged upon cities and the board is prepared to co-operate further by furnishing expert advice along these lines.

The board prepares statistics of fire loss and the causes of fires.

It is in close touch with the National Fire Protection Association and the Underwriters' Laboratories and issues a great number of pamphlets, based on the work of these organizations as well as on the work of its own engineers, on the construction and installation of devices of a protective or hazardous nature; these pamphlets are given a wide circulation.

It can be said that the work of the National Board is in the highest degree public spirited and its activities are to be highly commended.

THE NEW YORK BOARD OF FIRE UNDERWRITERS.

The New York Board of Fire Underwriters is an incorporated body; its members are the managers and agents of companies doing business in New York city. It carries on somewhat the same kind of work as the National Board, but its field of operation is confined to New York city.

It makes surveys of risks, promulgates standards of construction and equipment, and particularly of electrical equipment; it investigates important fires, it maintains a bureau of fire patrol, whose function is to protect and save property in case of fire; it maintains a bureau of adjustments which settles losses on which several companies are involved; it interests itself in matters concerning water supply, the fire department, the fire alarm service, and the origin of fires. The board is represented by a delegate to the board of examiners of the building department.

THE NEW YORK FIRE INSURANCE EXCHANGE.

The New York Fire Insurance Exchange is an unincorporated body; it was organized in 1899; it comprises in its membership officers of local fire insurance companies and managers and head agents of out-of-town companies. Practically all the companies admitted to this state which do business in New York city are represented in this body.

The area of operation of the Exchange is the so-called metropolitan district, or substantially the present city of New York exclusive of its suburban or outlying portions; in other words, the borough of Manhattan, that part of the borough of the Bronx lying west of the Bronx river, the borough of Brooklyn, Long Island City in the borough of Queens, and the American Dock Stores and piers in the borough of Richmond.

The object of the Exchange is the control of rates and commissions to agents and brokers; it fixes either specific or minimum premium rates on risks; it fixes the compensation of brokers and certain classes of agents. Certain branch office managers, so called, are allowed a commission of 12½ per cent. in addition to what they pay to brokers, and brokers are paid a commission of 5 to 25 per cent., graded according to location and class of property. The highest commission, 25 per cent., is paid upon the so-called "preferred risks," namely, dwellings and private stables, churches, schoolhouses, and combined store-and-dwellings.

The Exchange issues certificates to brokers whom it approves and without this certificate it is impossible for a broker to do business with its members. The conditions upon which a certificate

is granted are, first, that the broker must be engaged either exclusively in the insurance business or in real estate or closely allied employments; second, he must pledge himself not to make any rebate to or division of commissions with any assured or any person not a broker; third, he must pledge himself that he will not accept from any company or agent more than the commission allowed by the Exchange; fourth, he must pledge himself that he will not place risks with offices not members of the Exchange, unless sufficient insurance thereon cannot be obtained from Exchange members. The two pledges are given herewith:

Brokers' Pledge, Class I.—In consideration of the commissions or brokerages at the current rate that may be fixed and established for the time being by, and to be paid by members of, the New York Fire Insurance Exchange, I hereby promise and agree that I will not, directly or indirectly, make any rebate to the assured nor directly or indirectly pay to or divide with any person not holding a broker's certificate, any commission or brokerage, nor will I receive from any company or agent, directly or indirectly, any remuneration for business placed with them in excess of that permitted by the rules of the Exchange.

Brokers' Pledge, Class II.—In consideration of the payment to be made to me of an additional 5 per cent. to the commissions or brokerages as provided for in broker's pledge, Class I, signed by me, I hereby promise and agree in addition to said pledge, that in placing insurance, I will give the preference to the members of the New York Fire Insurance Exchange, and that I will not place any risk with those not members unless I cannot secure sufficient insurance on such risks from members of the Exchange, in which case I agree to file with the secretary of the Exchange, within one week of so placing, a list of such outside company or companies in which same has been placed, with the name of the assured, location of risk and the amount of insurance given them.

About 7,500 brokers are at present certificated by the Exchange; the fee for the certificate is \$10. About five-sixths of the buildings in the territory of the Exchange are given minimum, that is, non-schedule, rates according to the nature of the occupancy; these in general are the so-called "preferred risks." The

remaining 50,000 buildings, comprising mercantile, manufacturing and other general hazards, are rated specifically, or by "schedule;" that is, the rate is built up for each building or stock by a detailed analysis of the hazard. The general subject of schedule rating will be treated in Part II of this report.

An addition to the rate as otherwise determined may be made as a charge for local conditions, such for instance as bad streets or deficient water-supply, or an addition such as the "San Francisco Advance" made in 1906 in order that the companies might recoup themselves after the San Francisco conflagration.

In Part II of this report the subjects of rating, commissions and brokers will be discussed in detail; this discussion will apply to the New York Fire Insurance Exchange; further observations on the subject of the Exchange will be found in Part III among the recommendations.

THE SUBURBAN FIRE INSURANCE EXCHANGE.

The Suburban Fire Insurance Exchange is an unincorporated association of companies; its purpose is to control premium rates and commissions to agents and brokers. Its territory consists of Westchester county, Putnam county, Rockland county, Richmond county, the portion of the borough of the Bronx east of the Bronx river and all of Long Island outside the borough of Brooklyn.

The Exchange was founded in 1907; prior to that, since 1900, there had been in this territory a period of open competition. The membership of the Exchange comprises about 140 companies; not all the companies writing in this territory are members of the Exchange.

The Suburban Exchange is modeled on the New York Fire Insurance Exchange. The two pledges required of brokers are the same that are required by the New York Exchange. The Suburban Exchange allows all local agents a 20 per cent. commission; brokers who have signed the first pledge are allowed 5 per cent. commission, and those who have signed both pledges are allowed 10 per cent. commission.

About 145,000 risks, estimated to represent about 75 per cent. of the premium income in suburban territory, are rated under a system of minimum classification which in effect is a very simple

form of schedule rating. The remaining risks, about 5,000 in number, in general are rated by schedule.

THE UNDERWRITERS' ASSOCIATION OF NEW YORK STATE.

The Underwriters' Association of New York State is an unincorporated association of the special agents, or fieldmen, of fire insurance companies; its headquarters is Syracuse; its territory consists of all the counties north of Putnam and Westchester, excepting the cities of Buffalo and Tonawanda. The association has 124 members representing eighty-four companies; it was founded in 1884.

The object of the association is the making and control of premium rates, the promotion of co-operation among fieldmen and of good practices in the business.

The local boards of underwriters, composed of local agents are under the supervision of the State Association. The local agents of the companies that are represented in the association are forced to belong to these local boards and in joining they agree to maintain the association rates. Most of the agents' daily report sheets pass through the hands of the association's stamping-clerks who verify the correctness of the rate and see that the proper forms have been used. The association in this way is able to know whether or not the rates are being maintained. The same plan of local boards and stamping-clerks is followed by the Suburban Association.

The rates of the State Association are largely made by schedule although dwellings are for the most part on a tariff of minimum rates. The State Association does not concern itself with the subject of commissions.

THE BUFFALO ASSOCIATION OF FIRE UNDERWRITERS.

The Buffalo Association of Fire Underwriters is an incorporated body composed of local agents of Buffalo and Tonawanda; its purpose is to make and maintain rates and to improve local practices in underwriting; it has about seventy members; most of the companies doing business in its territory are represented in the association.

The agents' daily report sheets are reviewed by a stamping clerk, for the purpose of correcting errors in rates and forms and detecting whether the rate has been observed. An agent who does not observe the tariff rate is disciplined. The rating is done largely by schedule. Brokers are certificated by the Buffalo Board and their rates of commissions are fixed. They are required to sign a pledge not to rebate and not to place risks with agents who are not members of the association or with brokers who do not hold certificates.

The four organizations here named are the only rating bodies that operate in New York state. The important questions in the subject of rating and combination concern all four alike and will be discussed in Part II of this report.

It will be observed that there are some companies which do not belong to the rating organizations. These are called non-Board companies. The same company however, may be a Board company in one part of the country and non-Board in another. In New York city only do the companies all belong to the Exchange.

It is not necessary to name in detail the organizations which make rates in the rest of the country, as they are in general similar to those already described. In certain states, however, notably the so-called "anti-compact" states where organizations of the companies for making or maintaining rates have been prohibited by law, the rating is done by a "rater" who has no connection with the companies; he makes so-called "advisory" rates and sells them to the companies.

THE EASTERN UNION AND WESTERN UNION.

It has been seen that the New York Exchange and the Suburban Exchange regulate commissions to agents. In general, however, commissions are regulated by associations of companies formed for this special purpose; the eastern part of the country, from Maine to Texas, is under the jurisdiction of the Eastern Union; a similar organization called the Western Union has jurisdiction over the Middle West. These associations will be referred to again in Part II of this report.

THE INTERIOR ORGANIZATION OF A COMPANY.

The duties of the officers and directors of an insurance company are much the same as those of any other corporation. The territory over which a company operates is so large that it is customary either to have several Departments with salaried managers or else to put the business in certain fields into the hands of general agents who are paid a commission.

The person who comes into direct contact with the insured is the local agent. The local agent is paid a commission by the companies; usually a number of companies are represented by the same agent. Most companies employ in addition salaried men called special agents to look after their interests. A special class of persons called adjusters are employed by the companies to settle losses.

THE WORK OF AN INSURANCE OFFICE.

When an application for a policy is received by an agent he should take steps to satisfy himself that the risk is a desirable one. He then writes the policy and sends a Daily Report sheet to the company advising them of the details of the risks that he has written. If the company thinks the risk is undesirable the agent is directed to cancel the policy. The companies are aided in keeping track of their risks by very carefully prepared detailed maps. Frequently a company is unwilling to assume the whole risk and part of it is "reinsured" in another company; for this purpose some of the companies have "treaties" with foreign companies which do no direct business. A policy can be cancelled on the initiative of either party.

In case of a small loss the adjustment is often made by the local agent or a special agent. If the loss is large a special adjuster is sent out. If several companies are involved on the same risk the adjustment is often made for all together through an adjustment bureau.

PART II.

AN ANALYSIS, BASED UPON EVIDENCE RECEIVED, OF THE PROBLEMS OF FIRE INSURANCE.

GENERAL NOTIONS.

In the concluding part of this report will be found the recommendations which your Committee is prepared to present. The testimony taken, however, shows that the subject of fire insurance is so technical, the problems are so far-reaching, that it has been thought necessary to preface these recommendations by a careful analysis of the questions involved. The present Part is devoted to this analysis; while, for the sake of simplicity, an informal style of treatment has been adopted, it should be understood that the discussion is based very strictly upon the testimony which has been developed before your Committee.

As rating is the fundamental problem of fire insurance, other parts of the subject have been discussed, not in the order in which the testimony was developed, but so as best to suit the treatment of this particular question.

There are a few general ideas which it seems to the Committee should be once for all stated before going on to the consideration of the more immediately practical problems of the business.

Insurance is one of several methods for relieving misfortune. The simplest of these is that of voluntary contributions; but there are only a few steps from this to the most elaborate form of insurance. Even here the fundamental principle of insurance is present: the contribution of the many to help bear the misfortune of the few.

The transition from benevolence to the simplest form of insurance comes when those who are exposed to a possible misfortune agree beforehand that they will contribute if the misfortune should occur. The fact that, when the agreement is made, it is not known who the unfortunate one will be brings this plan down to a basis of self-interest. It is this form of insurance which is found in assessment (life insurance) societies, and among the town and county co-operative (fire insurance) societies.

A further step consists in collecting the premium in advance. This is a more significant step than is at first realized. The losses have not yet occurred, and may never occur. On what basis then

can the charges be made? Only on the basis of the law of general average, that is, that, in the long run and in the mass, even apparently fortuitous events do happen in an orderly and definite manner.

But this makes it necessary that the number of those who enter such an agreement shall be large, that there may be a broad enough basis for an average. Furthermore, it necessitates a very careful determination of what the premium should be, and this can be only on the basis of a similar past experience. This step then has introduced the necessity for "rating," that is for the determination of the so-called "hazard."

This is the form of insurance which is carried on in general by mutual companies. The mutual fire insurance companies protect themselves, however, against a possible insufficiency in the premiums by the right to assess.

The next step consists in doing away with a mutual agreement and the substitution of a third party who, in the capacity of middleman, collects the premiums and pays the losses. It is customary, furthermore, for this third party to guarantee the payment of the losses so that the policy holders are thereby relieved of all possibility of future assessments.

This final plan is the exact form of the so-called stock fire insurance. The third party that collects the premiums and guarantees to pay the losses is a corporation created for this purpose and known as a stock fire insurance company.

From this point of view the transaction may be viewed as a sale of a quasi-commodity, namely, indemnity in case of loss; the grocer sells flour, the insurance company sells indemnity. For certain purposes this is a valid point of view, but it must not be allowed to obscure the fact that the business, even in this form, is essentially mutual. The business could not endure for a day if there were not this mass of the insured, even though held together only by economic forces, yet as truly standing behind the company as though they were still united by a mutual agreement.

For immediately practical purposes and for legal purposes, the relation between insurer and insured may be thought of as simple and direct but in an inquiry such as the present, involving the public as a whole, and involving the future as well as the present, the important questions are economic rather than legal; or better,

sound laws can be founded only on a study of fundamental, economic conditions, and for insurance this can be attained only by constantly bearing in mind the essentially mutual character of the business.

Insurance men refer to this fact when they speak of insurance as a tax, meaning by this only that to pay the fire losses of a community it is necessary to collect all this money (and enough more to pay the expenses of the business) from the insured, and that the company acts only as collector and distributor.

It seems almost unnecessary from this to draw the additional corollary that the company in the long run can pay out only what it collects; yet this is commonly lost sight of. Even among intelligent people there is a feeling that when an insurance company pays a loss there is an end of it, and that, therefore, in some mysterious way, it escapes being an economic loss to the public.

The payment of premiums is forgotten in the payment of the loss. It is this failure to balance the many against the few, the public against the individual, the long view against the short view, that leads to so many popular fallacies; but in such an inquiry as the present it is the public and the long view which must be given precedence.

The contingency upon which the payment is made is a loss by the insured. There is no inherent reason, however, why this contingency should not be the misfortune of some one else; that is, A might take out a fire insurance policy upon the house of B. The effect of A's holding a policy upon his own house is to make him, to a certain extent, indifferent to threatened misfortune, but to hold a policy upon the house of B would make the burning of B's house something to be desired.

To allow this would obviously be such bad public policy that such contracts as these are now impossible to sustain although in the early days of insurance they were common. The insured must now show an "insurable interest" in the property. This provision limits insurance strictly to the furnishing of *indemnity*.

RATING.

The difficult problems of the fire insurance business all center in one way or another about the subject of rates. This is an important matter in any business, but in fire insurance there are dif-

faults and peculiarities that make it particularly important. In a manufacturing business the price of an article is largely determined by the cost of production and this can, in general, be definitely ascertained. In a mercantile business the selling price is determined by the buying price. In the case of public utilities the fixing of rates is more difficult; more elements enter into the cost and more factors must be given consideration.

In fire insurance companies in which the assessments are made after the losses the rating problem has no particular difficulty; but in stock companies, where the premium is collected in advance, the anomalous condition arises that a price must be set to pay for something that has not happened and may not happen at all.

The price has therefore to be based upon the "expectation" of loss or the "hazard" as it is called. What should be the rates for a planing-mill and for a fire-proof office building? This is equivalent to saying, "what is the hazard of each," or in other scarcely more illuminating words, "What is the expectation of burning of each." No one would fail to be able to assert that this is greater for the planing-mill than for the office-building, yet the underwriters must go further than this and fix a numerical value upon these hazards.

Fortunately there is one guide in this matter, the past; otherwise the problem would be quite hopeless. If experience has shown that out of every thousand planing-mills there are the equivalent of twenty-five total losses and, if this planing-mill is deemed typical of the thousand, a rate of \$2.50 per \$100 of insurance should prevail (this is without loading for expense); if the mill is deemed to be below the average of the mills upon which the experience is based, "underwriting judgment" must be invoked, in lieu of more precise knowledge, to decide how much larger the rate must be.

This, very briefly, is a description of the process of making the rate in fire insurance, although in schedule rating, as we shall see, the process is far more detailed.

When one considers the almost infinite complexity of the hazards that are present in buildings — faulty construction of all sorts, excessive heights, large floor areas, openings between floors, dangerous processes, inflammable material, materials susceptible to damage — one can form some comprehension of the difficulties of rating.

Theoretically the rate measures the destruction that *would* occur in some thousands of just such buildings under just such conditions; practically, what the underwriter has to work on is what *has* happened to buildings that in certain respects resembled this one, and the problem of rating is the adaptation of this experience to the particular risk in hand.

To this already difficult problem must be added however two other features; first, new hazards are arising daily upon which no experience has been accumulated, which, nevertheless, must be considered in making the rate, and second, new processes and new forms of construction are being so rapidly developed that the experience upon a class becomes to a degree obsolete before time has elapsed in which to collect a large enough experience to give an average.

A further difficulty may here be referred to, the fact that in large cities there is a conflagration hazard of an entirely indeterminate size, that is, conflagrations come too infrequently to allow for the working of the law of averages.

As an example of the first point may be taken fire-proof hotels; there is not adequate experience in this class on which to base rates; another example is the hazard of acetylene gas; this illuminant came into use very rapidly and its hazard was almost unknown.

As an example of the second point may be taken electric power stations; the defects of the early installations have been so thoroughly overcome that the experience of ten years ago would be misleading.

Granted that the problem of rating is very difficult; the practical result is that it is impossible to make rates properly on the basis of a single company's experience. The experience even of the largest companies is not extensive enough to insure the proper working of the law of averages on all classes. It is very natural then, and from this point of view desirable, that the companies should, for this purpose, combine; for not only can they thus make rates more effectively but, since rates on the same classes are needed by all, it would be a useless expense to have the work duplicated. So far therefore as the *making* of rates goes, it is desirable that the companies should combine; but in actual practice the combinations of the companies are not only to make rates but to maintain them,

and the desirability of this is another question which will be discussed later.

OPEN COMPETITION.

We have now to consider the effect of open competition in fire insurance. It is not necessary to theorize about this for there is plenty of evidence in the rate wars which were formerly carried on and which to some degree still prevail. The universal effect of such periods of open competition wherever and whenever they have occurred has been a cutting of rates to a point that was below the actual cost of the indemnity. If the rate war had been general this would have meant the ultimate death of the company, and rate wars of even a local character lead, if long continued, to the dissolution of the smaller and weaker companies. The effect on all companies is weakening. The policy-holder, to be sure, gets his insurance very cheaply; too cheaply, for the weakening of the companies is not in the long run and on the whole an economic good, for there is just so much less protection behind the insured in case of a conflagration. The mutual character of insurance is so strong that nothing which tends to produce inferior protection can be for the public good. It has not done the policy-holder any good to get cheap insurance if, when the test comes, the protection is found to be worthless.

But this is not all. In a state of open competition the rates adjust themselves not to the hazards but largely to the strength of the insured so that the man of influence, whose patronage is desired, will get his insurance too cheaply, as against the small man who is not in a position to drive a sharp bargain. That is, competition results in discrimination.

Rate wars in fire insurance are very fierce; the motive is the same as in any rate war, namely, to secure business even at a loss in the hope that when normal rates again prevail the patronage so won will remain and the loss will be made good.

To summarize the case: the effect of a period of sustained open competition is the procuring by the public temporarily of cheaper insurance; this advantage mostly falls to persons of influence; the quality of the protection is lowered since the companies are weakened. Furthermore, if the process continues long

enough some of the smaller companies will be forced to retire and their business will be absorbed by the large companies.

Rate wars terminate when the companies realize that self-preservation requires them to obtain adequate rates and ordinarily this can be done only by some form of agreement.

The question occurs to one whether there cannot be open competition that does not go to an extreme, such competition as there is in, for instance, the grocery business or the shoe business. The distinction seems to be this: the grocer has very clearly in mind what his goods have cost him and what price he must get for them if he is to escape a loss, and he will not, except in an extremity, sell at a loss. The underwriter, on the other hand, is selling indemnity against something that may never occur, so, however low his price, there is always some possibility that he will escape without a loss; at any rate he can gamble on the chance. What corresponds to the point below which the grocer dare not go without a loss is the average loss experience on the class to which the risk belongs. But this is not easily ascertained; at any rate it does not stare the underwriter in the face in the same way that the buying price of sugar confronts the grocer.

Another reason why open competition goes further in fire insurance than in other lines is possibly due to the fact that the corporate form of organization encourages the officers to use methods which perhaps they would not use if the business were entirely their own.

COMBINATION.

At any rate, however you may account for it, the actual historical fact is that at all times and in all places a state of open competition has been found impracticable and that combinations of the companies have been formed not merely to make but to maintain rates.

Now when a man comes to buy insurance and finds the companies combined on the matter of rates, he is likely to feel shocked, particularly in this day when all combinations of capital are looked at with suspicion. He finds that it is impossible to get insurance, at any rate of the grade that he desires, without paying a price that has been definitely agreed upon by the companies. He has no chance to bargain; the price is made and unless he goes to

the trouble of hunting up companies that are not in the combination, he must either take the insurance at that price or leave it. It is natural for him to conclude that this combination exists in restraint of trade and should be broken up.

ANTI-COMPACT LAWS.

And this is exactly what was done by a number of states at about the time that the formation of "trusts" began to appear as a menace to the country. So-called anti-compact laws were passed which made it illegal for the companies to combine either to make or to maintain rates. That is, these combinations were recognized to be trusts and it was a simple matter, apparently, to break the combination.

As a matter of fact, however, the economic forces involved were too strong to be restrained by law. Nothing could overcome the fact that a condition of open competition in which there were no standard rates was an impossible condition for doing business. The result, therefore, was that there came to be in every one of the anti-compact states a "State rater" who made and promulgated the rates in essentially the same way that they were made before by the rate-making bodies of the companies.

These "advisory" rates so made were sold to the companies and were observed or not as the companies saw fit. So clearly, however, was the importance of avoiding general demoralization recognized that in general the rates were observed by the leading companies. So the net result in the "anti-compact" states has been that the rates, instead of being made by the companies, were made by a "rater" and sold to the companies; the rates in general were observed as before but as there was no agreement to maintain rates it did become possible to a certain extent to bargain over the price.

The result has been that in general people paid established rates for their insurance but that, where a man had enough influence, he could, if he cared to, obtain concessions in rate. That is, at least one result of anti-compact laws has been an increased discrimination against the average policy-holder and in favor of the rich and influential.

As to the rates before and after the passage of the anti-compact laws the testimony seems to be that the rates have not been lowered by the passage of such laws. Figures from Missouri show that there the rate did not follow the burning-ratio so closely after the passage of the law as before. This is explained in the following way: before the passage of the law the rates were largely made by boards of local agents who were interested, for the sake of their customers, in keeping the rates low. The state raters, however, having no contact with the insured, did not feel this influence and the tendency was for the rates to increase.

The actual working of anti-compact laws has not been satisfactory; they have not decreased rates and they have greatly increased discrimination; they have taken the rate-making out of the hands of the companies, who were in direct contact with the business, and put it in the hands of persons who had no way of testing by experience the rates which they made, and who furthermore did not stand in such relation to policy-holders as to feel the force of public opinion.

It is well recognized that in general anti-compact laws have been a failure and there is noticeable a distinct reaction against them. This is observable in the agitation for their repeal, as in Missouri where a bill repealing the law was passed at the last session of the Legislature but vetoed by the Governor; this is also noticeable in the rising agitation for some kind of control of rates by the State, a control that would even perhaps go so far as to place the making of rates with the State. Three states, all of them so-called "anti-compact" states, Kansas, Texas and Louisiana have gone to various lengths in this matter as will presently be explained.

There is another adverse effect of anti-compact; to explain this it will be necessary to develop in some detail a refinement of modern fire insurance rating whose importance and influence can hardly yet be fully estimated; this is the subject of schedule rating.

SCHEDULE RATING.

This method of rating proceeds upon the theory that the hazard of a risk may be analyzed into its component parts and that the rate for the risk as a whole may be built up from its various

elements. For example, let us suppose the proper rate for a certain type of building is known, we will say a five story, brick mercantile building, of 5,000 square feet of floor space on each floor, with closed elevator shafts and with certain other definite details of construction. Now it will be generally conceded, at any rate it can be demonstrated by experience, that additional stories, a greater floor space and open elevator shafts are all factors that tend to increase the fire hazard. The theory of schedule rating is that the quantitative effect of each of these factories in increasing the fire hazard can be separately given and that the resultant rate may be so built up. While there is a field here for a critical analysis of just how this combination shall be effected the reasonableness of the general proposition must be readily admitted.

The most common method for uniting these factors into one rate is by simple addition; this is the method that is generally used in New York city and wherever in this state rates are made by schedule, for instance: let us suppose that the rate of the five-story building first described to be 50 cents; let us suppose now that the hazard of three additional stories may be measured at 32 cents, that the hazard of each additional 1,000 feet of floor area may be measured at 3 cents, that the hazard of open elevator shafts may be measured at 6 cents, and furthermore, that the presence of fire extinguishers, which we will suppose are not in the building we have used as a type, serve to decrease the hazard to the extent of 5 cents. Then the rate for an eight-story brick building, of 7,000 feet ground-area, with open elevator shafts but equipped with fire extinguishers, in other respects, however, being like the type building already referred to, is obtained as follows:

	Cents.
Rate of type building.....	50
Increase of hazard by 3 extra stories.....	32
Increase of hazard by 2,000 feet extra ground-area.....	6
Increase of hazard by open elevator shafts.....	6
	94
Reduction of hazard because of fire extinguishers.....	5
Final rate of building.....	89

The actual practice of schedule rating by, for instance, the New York Fire Insurance Exchange differs from this only in degree. A base rate for a certain standard building is taken, the standard involving conditions regarding location and fire protection as well as construction and to this are added charges for deficiencies with regard to various elements of construction, equipment, occupancy and exposure, and from the result are taken whatever allowances are to be made for conditions that are more favorable than the standard upon which the base rate is predicated.

The schedule which applies this method most carefully is the so-called Universal Mercantile Schedule originated by a committee of the underwriters of which Mr. F. C. Moore was chairman; it is often known as the "Moore" schedule; this forms the basis for all the schedules in use in this state, and in fact in a large part of the United States.

The technical detail in a schedule lies first in the nature of the ground work, or plan, and, second, in the determination of the exact numerical charges to be made for the different elements of the hazard.

Another schedule of a somewhat different type is in use now in a large number of states in the Middle West and South. This was originated by Mr. A. F. Dean, and is known as the "Dean" or "Analytical" schedule. Its essential feature consists in the fact that the charges instead of being flat are a percentage of the base rate. This, to a degree, expresses the fact that there is a relationship among the hazards, for instance, that a stove is a greater hazard in a building of poor construction than in a building of good construction. The good points of this schedule are, however, quite as much of a practical as of a theoretical character, namely, as the charges are all percentages of the base rate, if the resulting rate should turn out in the light of experience to be too high or too low it could be accordingly lowered or raised simply by lowering or raising the base rate.

It will be readily realized that the exact nature of the details of either the plan or charges in a schedule is a highly technical matter which need come in no way under the surveillance of this Committee. It is sufficient for the purpose of the present inquiry that the companies are using methods for the determination of rates

which require a detailed analysis of the hazard and that each element of the so analyzed hazard has a definite contributory effect to the final rate.

The economic, even the sociological, effect of the application of schedule rating can scarcely be overstated. It is doubtless true that schedule rating is at present by far the most powerful agent in the inauguration of good building construction and in checking the appalling fire waste of the country.

The power of schedule rating as an economic force can be very simply explained; it lies in the fact that it is specific and open, that is to say the rate, instead of being made as a single lump sum, is in direct relation to the various features of the hazard. The importance of this lies in the fact that when the insured sees just how, by making certain changes in his building, he can obtain a more favorable rate, there is a direct appeal to his pocket which is at once taken advantage of. The change may consist simply of clearing rubbish out of the basement, or closing an opening, or it may be the inclosing of the elevator shafts or the equipment of the building with automatic sprinklers. In any case the insured has before him the exact details of how his rate is made up and can see just how much his rate can be reduced by making improvements. Usually the reduction in rate is so great as compared with the cost of improving the conditions that the changes are at once made. Even the expense, which is considerable, of installing automatic sprinklers is not in general greater than the saving on from two to five years' premiums.

Not only does the application of schedule rating operate to improve already existing risks, but it leads in a similar way to greatly improved construction in new buildings. Most new buildings of any importance that are being built nowadays are planned with full consideration of the reductions in rate which various features of construction will command. It is not too much to say that to schedule rating is due, as much as to any other one cause, the credit for improvements in modern construction.

After a schedule has been formed, which, it may easily be understood, is a matter of great difficulty and delicacy if it is to be generally useful, the application of the schedule is to a degree a mechanical process. In practice, when a risk is to be rated under a

schedule, an inspector is sent to the risk who makes a survey of it, noting in what respects and to what degree it falls short of the standard, noting also any features that are above the standard; he makes in fact a complete and impartial record of the risk in so far as its features have a bearing upon the fire hazard. It then becomes a matter of routine office work to apply the schedule to the elements of the risk as described in the survey.

When allowances are made for the slight differences in point of view between different inspectors, the rate for a given risk, when a schedule has once been established, is perfectly definite.

It is this fact that gives schedule rating one of its chief values, the fact that it eliminates discrimination — not completely, for in case the schedule is wrong one class will suffer at the expense of another — but at any rate the discrimination is all centered in the schedule itself. It certainly eliminates discrimination on the basis of "influence" which is the most vicious form of discrimination. And, even though the schedule is not perfect, it does what is most important, it adjusts the rates approximately correctly inside of given classes.

That is, a schedule may err in making wood-working establishments pay too high a rate as compared with metal-working establishments, but it is more important to have the rates for different wood workers properly adjusted among each other than the rate as between wood workers and iron workers. The reason for this is that the wood workers and iron workers are in direct competition each among his own group, but there is no particular competition of wood workers with iron workers.

Any reasonable schedule, even though it may have considerable defects, will tend to produce equity inside of fairly homogeneous classes.

THE INFLUENCE OF SCHEDULE RATING UPON FIRE PREVENTION.

The operation of schedule rating in bettering fire prevention is one of those powerful unconscious agencies like the betterment of the race through natural selection. For the operation of natural selection there must be a correlation between the quality in question and the increased tendency of the individual to survive; for schedule rating to better conditions there must be not only a

definite relation between a better condition and the insurance rate, but this relation must be capable of being brought forcibly to the attention of the insured. In this process there is still another agency acting and another force. The agency is the broker or the local agent and the force is competition.

That broker or local agent can best secure business who can, other things being equal, perform the greatest service. Among the services that a broker or local agent does in this very way perform is the service of bringing to the attention of a client the reduction in rate that he can secure by making changes in his old building, or in planning his new building, so as to conform to the standards of the schedule. And if he should fail in assiduity in keeping his client thus informed, he would find that another broker or another agent had slipped in and performed this service and that his client's business had been transferred to the one who had thus demonstrated a greater capacity for looking after the interests of the insured.

The mechanism is thus complete: first, a rate which is made specifically to depend upon the various elements of the particular hazard, second, the power of the insured to ascertain all these facts as to his rate, third, the fact that the matter is brought vigorously and definitely to his attention by either broker or local agent, and it might be added, fourth, that, in case changes have been made the so-modified conditions will be given credit at once in the rate.

It is not to our credit that schedule rating is the most powerful agency for fire prevention, for it acts entirely through the selfish desire of the insured to lower his insurance rate, not primarily because he is interested in reducing the fire loss. But the insured will be only partly compensated by his insurance in case he suffers a loss. There will be an interruption of his business and a generally chaotic condition from which he is bound to suffer; he should have an interest in fire prevention on this account. To be driven to an interest in fire prevention only indirectly because of its effect upon his premiums is not praiseworthy when there are direct ways toward the same end, the enactment for instance of proper building laws, the creation of offices for inspecting risks and for a general surveillance over conditions looking toward fire prevention, not to speak of greater individual carefulness.

While, however, we are waiting for the time when we shall be farsighted and intelligent enough to attack this problem directly, we must recognize that we have, in the operation of schedule rating, an immensely important and effective instrument for this purpose; that largely unconsciously, or at least without direct intention, the insurance companies through their development of schedule rating are facilitating this work. In a consideration therefore of insurance legislation there must be kept in mind, among other things, the effect of any proposed law upon the operation of this process.

ANTI-COMPACT LAWS AND FIRE PREVENTION.

Anti-compact laws (and this brings us back to the point of departure) have a tendency to break down the force of this beneficial action. For, while in anti-compact states the rating is usually done by schedule, there is no longer such a clear-cut relation between the hazard and the rate; the "rates" are now "estimates" and while, as a matter of fact, they are generally adhered to, there is just enough dissociation of the rate-making and the rate-getting decidedly to weaken the good effects of the system of schedule rating upon fire prevention.

OPEN COMPETITION AND FIRE PREVENTION.

The beneficial effects of schedule rating have been demonstrated by the rise in the burning ratio which follows a period of demoralization in rates. During a rate war schedule rating is of course abandoned. It then follows that untidy conditions or the absence of a watchman will not be penalized through the rate, and so rubbish is allowed to accumulate, the watchman is taken off, and there is a general lowering of tone which manifests itself in an increased burning ratio.

ANTI-COMPACT LAWS AND STATE REGULATION.

Three states which have had anti-compact laws, becoming dissatisfied with the results, particularly because of the discrimination which anti-compact laws had produced and fostered, have recently entered upon a system of State regulation of fire insurance rates.

In Kansas, under the anti-compact law, a very aggravated condition of rate demoralization existed, with accompanying discrimination. There was general dissatisfaction both on the part of the people, because of gross discrimination, and on the part of the companies, because they were making no money. A law was passed which required the companies to file schedules of rates which they could not depart from, and, at the same time, rebating was prohibited. Power was given to the Superintendent of Insurance to order changes in the rates if in his opinion they were not equitable. The constitutionality of the law is being tested in the courts. In operation the law has not been unsatisfactory. The Superintendent has made one general reduction of 10 per cent.

In Texas, the Legislature, in several special sessions, has been struggling with the problem of rates; the conditions there are very much involved, and very unsatisfactory. There has not been time to see whether the new State-rating law will improve the situation.

The Louisiana law provides a State board with power to review rates and to order changes if necessary.

None of these laws has been in effect long enough to show what the practical result of State regulation of rates will be.

It is interesting to observe, however, how entirely the principle of State regulation is opposed to the principle of anti-compact. Under anti-compact, a premeditated and enforced uniformity of rates was prohibited while under State regulation the effect, either by statute or in actual practice, is to secure absolute uniformity. The anti-compact laws in effect made it possible to "bargain" and the result was gross discrimination; under State regulation bargaining and discrimination are impossible.

OBJECTIONS TO STATE REGULATION.

Some very grave objections can be made on theoretical grounds to the principle of State regulation of rates. In the first place if there is to be regulation at all the power must be delegated to some one outside the companies either to make, or in the last analysis, to order changes in rates. This is a very dangerous power; it is conceivable that it might be used for political pur

poses, at any rate he who exercised the power would have effective pressure brought to bear upon him from only one direction, that is, to reduce the rates, while at least in certain emergencies the situation might demand an increase.

The only just basis for making rates is either the experience of those trained in the business or accessibility to a large collated loss experience or better, of course, both. But there are at present no statistics of loss outside of the offices of the companies; and, even if there were, the application of them properly is such a technical matter as to require the services of experts. To make or revise rates properly then the State would have to collect a loss experience, presumably by calling upon the companies for it, and it would have to employ experts at least as capable as those now employed by the companies.

The actual possibility of doing this is, of course, not questioned; the point is that the situation must be very aggravated that would warrant the State in assuming such an extended and technical piece of work.

Certainly the persons who, by training and by closeness to the problem, are best able to handle this matter are those in the business, and this function should be taken away from them only after making perfectly sure that it cannot otherwise be kept free from abuse, in fact further than that, only after making sure that it can be better administered by the State.

It has been suggested that this matter might be regulated by a board or court of review to which the companies might be cited by complainants to show cause why the rate should not be changed. It would not be absolutely necessary for this court to possess technical knowledge; many technical matters are decided by our courts of justice to-day, merely on the presentation of evidence. Such a plan might be feasible; the question is, however, whether it is necessary or desirable.

One very great practical difficulty in State rating remains to be explained. Insurance is based on general average; no one locality is sufficient for this, not even a state, not even the United States in the case of large conflagrations. If rate making were lodged with the State, and the experience of that state had been favorable, the tendency would be to make rates purely upon this experience.

The most serious effect of this would be that, in case of a large conflagration, it would be impossible for a company to recoup itself, for each state in standing upon its own experience would refuse to contribute to an outside loss; the result would be that the state in which the conflagration occurred would have to pay the entire loss. This would, of course, break down the very first principle of insurance, for one state is insufficient to stand the shock of a large conflagration. The San Francisco fire strained the resources of the whole country and if it had been borne entirely by California, that is, if the companies had been restricted to California in recouping themselves, the blow would have been crushing.

This is not an entirely imaginary situation. There happens to be an actual example at hand. Wisconsin is an anti-compact state to the extent of prohibiting combinations of companies but it permits the making of rates by local agents. This plan has in general given satisfaction to both companies and insured.

After the San Francisco fire there was a general increase in rates throughout most of the country. But in Wisconsin when the companies tried to make an advance it was resisted by the local agents (the local agents are, of course, much more influenced by popular feeling than the companies), and the result was that Wisconsin escaped paying its share toward putting the companies into a position to meet another such disaster.

It is evident that rating should not be placed in the hands of those whose interests are more restricted than the territory over which it is necessary to operate to secure an average. In the case of the conflagration hazard this territory must certainly take in at least the whole of the United States.

While State regulation stands always in the background as the theoretical solution of the problem of rating in fire insurance, as it does, indeed, for many other problems, it certainly should be invoked only as a last resort.

COMPLAINTS BY THE INSURED.

When one begins to search for the state of affairs in fire insurance, which would warrant this extreme measure, he is surprised

to find that it does not seem to exist. This Committee when it began its work sent out over six hundred letters to all the commercial organizations in this state inviting complaints on the subject of fire insurance. It was furthermore requested that the letter be published in local papers, and, as a matter of fact, it was given a large additional circulation in trade-papers; it was sent out by the Bar Association of New York city to each of its members, and it was given special notice in the publications of the National Association of Credit Men, who had already interested themselves in the subject of fire insurance. There were not over a dozen complaints which were received in reply. Some other complaints were received during the progress of the investigation.

Altogether about thirty persons appeared before the Committee to make formal complaints and nobody who desired to make complaints before the Committee was refused permission.

Most of the complaints were either with regard to arbitrary increases in rates or from brokers who had been refused certificates by the Exchange. The individual cases, in which arbitrary increases of rates were complained of, were referred to the managers of the rating organizations concerned. In most of these cases the increase in rate was found to mark the transition from a period of loose rating to one of exact schedule rating, and the reasons given for the great advance were that the old rate was grossly inadequate. Most of the complaints in suburban territory were with regard to the increase in rates that had been made when the Suburban Exchange was founded. Evidence was brought forward by the companies to show that they had been losing money in the suburban territory before the formation of the Exchange and that the rates established were no higher than on other risks in other parts of the country.

In the absence of any exact figures, the Committee was not able to judge whether or not the final rates were just, but the rates on these risks were shown not to be discriminatory.

Over against these complaints there was considerable testimony, particularly on the part of large insurers that the rating in this state was being done in an acceptable manner, and a very great appreciation of the economic value of schedule rating. In fact, a pe-

tion was received by the Committee, signed by forty-five leading buyers of insurance, commending the principle of schedule rating and opposing unbridled competition.

THE EARNINGS OF FIRE INSURANCE COMPANIES.

In trying to discover the sources of the hostility on the part of the public towards fire insurance companies, it becomes of great importance to examine the question of earnings. It has been claimed by insurance companies that the earnings have been small, for instance, that the "underwriting profit" has been nothing during the last forty years. There was evidently so little real ingenuousness in this statement, not that it was wrong, but simply that it was unenlightening, that the public set it down as not worth consideration, and continued to believe that fire insurance was very profitable. In order to have some definite figures to present, the Committee requested Mr. J. H. Woodward, head of the Auditing Bureau of the New York Department of Insurance, to have an inquiry made on this subject. Before these figures are referred to, it will be necessary to explain in detail on what basis they were made.

What is left of the premiums received during the year, after losses and expenses have been paid, is what is commonly called "underwriting profit." If money earned no interest this would be the whole profit, but, in reality, interest is almost as important an element in the profit of an insurance company as it is in the case of a bank, in fact, the unearned premium reserve is on deposit with an insurance company in very much the same way that the money of depositors is on deposit in a bank.

Let us take an example:* suppose a company with a capital of \$1,000,000, a surplus at the beginning of the year of \$4,500,000 and doing a business during the year of \$6,250,000 in premiums; suppose the unearned premium reserve at the beginning of the year is \$5,800,000, suppose the losses during the year have been \$3,450,000 and the expenses \$2,400,000. Then the underwriting profit during the year has been \$6,250,000 less \$3,450,000 less \$2,400,000, or \$400,000, or expressed as a percentage, 6.4 per cent. upon the premium receipts, or 40 per cent. upon the capital.

* This is a fairly typical example.

Now the funds that the company has had at interest during the year are approximately the capital, \$1,000,000, the surplus, \$4,500,000 and the reserve,* \$5,800,000, altogether \$11,300,000. If this sum has earned 4 per cent. net the earnings from interest will be \$452,000 or 45 per cent. upon the capital. The investment earnings of the company in this case are therefore somewhat greater than the so-called "underwriting" earnings and if in an unfavorable year the premium receipts were wholly used up in paying losses and expenses the company would still make a profit of 45 per cent. upon its capital stock from interest alone.

The principle stated in words is as follows: besides the capital stock the company holds a surplus and an unearned premium fund; even a low rate of interest upon this sum of money will yield a large return upon the capital.

The point that has been brought out here is that the so-called "underwriting profit" is only a part of the profit of an insurance company, and that the companies in professing to take the public into their confidence and not making this point clear may rightly be criticised.

In passing we cannot help noticing that the earnings were 85 per cent. of the capital stock; superficially, at least, this seems an excessive profit and would seem to justify the popular impression that fire insurance is a bonanza.

This illusion largely disappears when we consider carefully upon what basis the earnings should be figured. In reality, the amount of the capital of a fire insurance company has very little significance; it is scarcely anything beyond a basis for computing the ownership of the company. The real capital, in the economic sense, that the stockholders have in the business is to be valued either as what the business would bring if sold as a going concern, or as what it would bring if liquidated. The former, the market price, would in general be greater than the latter by the value of the good will of the business. The sum for which the business could be liquidated, which we may call the proprietorship or the "proprietary interest" would be, in general, the capital, the surplus, and

* It would be more proper to use the average surplus and reserve, but the effect in this connection would be simply to make a slight change in the effective interest rate.

say 30 per cent. of the reinsurance reserve (for the reason that the business could be reinsured for about 70 per cent. of the reserve; the reinsurance company would be to no expense in procuring the business, and, hence, could afford to take it at less than the full premium rate). In the example given above this would be \$1,000,000 plus \$4,500,000 plus \$1,740,000, or \$7,240,000. This is the sum of money which, at the lowest estimate, the stockholders have, invested in the business. If the profits of the year, \$852,000, are figured on this amount as a basis, the rate of income is 11.7 per cent. instead of 85 per cent. as when figured on the capital stock.

Now this method of figuring profits is the method that is used in every other kind of business, and there is no reason why it should not be equally valuable in fire insurance. It certainly answers the question which the prospective buyer of fire insurance stock wishes to have answered, namely, "how much, taking into account all sources of income, underwriting profit, interest and gain from sale of securities, will my investment yield." It certainly answers the question which the public is interested in: "what, taking everything into account, has the fire insurance business yielded? Have the profits been excessive? if so the premiums must have been too high."

The actual method used was even somewhat simpler than this. Let us suppose a mercantile business, which on the basis of an inventory shows that the proprietors have \$100,000, net, invested in the business at the beginning of the year; this may be called the proprietorship or proprietary interest; let us suppose that at the end of the year a similar statement shows that, without any further contribution by the proprietors, the business has increased to \$105,000, and that the proprietors have in addition taken out \$5,000 in profits. Then the earnings of the business have been the \$5,000 of profits plus the difference between the values of the proprietary interest at the beginning and at the end of the year, that is, \$10,000 altogether, and the earning rate of the business is the ratio of this to the \$100,000 which was in the business at the beginning of the year, or 10 per cent.

In the case of the insurance company the proprietary interest

has already been defined as the capital, surplus and 30 per cent. of the reserve. The difference between the values of this at the beginning and end of the year, plus the dividends to stockholders less any possible assessments form the earnings for the year and the ratio of this to the proprietary interest at the beginning of the year gives the earning rate.

In our case we may suppose the figures to be as follows:

Capital (end of the year).....	\$1,000,000	
Surplus (end of the year).....	4,850,000	
30 per cent. of reserve (end of the year).....	1,860,000	
Proprietary interest (end of year).....	\$7,710,000	
Proprietary interest (beginning of year).....	7,240,000	
Gain in proprietary interest.....	\$470,000	
Dividends to stockholders.....	382,000	
Earnings (as before).....	\$852,000	
	\$852,000	
Earning rate (as before).....		11.7%
	\$7,240,000	

The result can be expressed in a slightly different way, thus: the money which the stockholders have, invested in the business, has yielded 11.7 per cent.; of this it has earned 4 per cent. directly as interest, since the entire amount has been invested in interest-bearing securities; the remainder 7.7 per cent. represents the profit which has come in consideration of the peculiarly hazardous nature of the business, that is, the stockholders have earned 7.7 per cent. upon their money by leaving it at risk in addition to what they could have earned if they had kept it invested in safe securities. The figures used are, of course, purely in the way of illustration and in themselves have no significance.

The figures that were prepared by the Insurance Department were made on this basis. The following groups of companies were selected:

- I. The six largest United States companies.
- II. The six medium United States companies (with assets about half-way between the assets of the largest and the smallest companies).
- III. The six smallest United States companies.
- IV. Six new United States companies between five and ten years old.
- V. Six foreign companies.

The first four groups were practically self-determined; in the last group were taken four typical English companies and two Continental companies.

The investigation was made for each of the last twenty years or failing that for the lifetime of the company.

In the first group, that of the six largest United States companies, it was found that the average rate of earnings for twenty years had been 10.9 per cent., 12.8 per cent., 10 per cent., 9.3 per cent., 10.1 per cent and 7.6 per cent., or an average for all six companies of 10.1 per cent. The fluctuations from year to year had been violent, ranging from a profit for one company in 1908 of 31.4 per cent. to a loss for another company in 1906 of 49.4 per cent.

The rate of dividends returned, computed on the same basis, and for these same companies in the same order were 4.6 per cent., 4.1 per cent., 4.3 per cent., 7.3 per cent., 4.9 per cent. and 6 per cent. with an average for all six companies of 5.4 per cent.

That is, in words, for the last twenty years the six largest United States companies have earned on the average 10.1 per cent. per year on the amount of money that they have had, invested in the business; they have during that time on the average paid on the same basis dividends of 5.4 per cent., that is, of their earnings they have distributed in dividends a little more than half, keeping the remainder in the business where it has gone mostly to

increase the surplus and is thus of course at the hazard of a conflagration.

The detailed figures for these six companies are as follows :

**EARNING RATES OF THE SIX LARGEST UNITED STATES
COMPANIES.**

Year.	Earning rate.	Dividend rate.
1890.....	9.7	6.8
1891.....	5.4	6.6
1892.....	8.5	6.4
1893	—1.3	6.3
1894.....	14.5	6.8
1895.....	12.3	6.4
1896.....	14.9	6.2
1897.....	17.5	6.0
1898.....	10.7	5.7
1899.....	4.8	5.4
1900.....	9.4	5.4
1901.....	10.1	5.3
1902.....	12.6	5.1
1903.....	12.6	4.3
1904.....	9.9	4.9
1905.....	17.6	5.2
1906	—14.0	—1.3
1907.....	2.5	5.3
1908.....	26.2	5.7
1909.....	18.4	5.2
Average	10.1	5.4

The same figures for the second group of the six medium companies give earning rates of 6 per cent., 8.9 per cent., 6.9 per cent., 4.8 per cent., 9.2 per cent. and 4.6 per cent., or an average for all six of 6.6 per cent. The dividend rates have been 3.2 per cent., 3.4 per cent., 3.7 per cent., 2.1 per cent., 3 per cent and 2.7 per cent., or an average for all six companies of 3.3 per cent., or to summarize: six medium-sized companies for the last twenty years

earned on the average 6.6 per cent. per year on the amount of money they had, invested in the business; just half of this was distributed in dividends and half was kept in the business.

The same figures for the third group of the six smallest United States companies give earning rates of 8 per cent., 6.2 per cent., 5.9 per cent., 4.8 per cent., 2.3 per cent. and 2.2 per cent., or an average for all six of 4.5 per cent. The corresponding dividend rates are 4.7 per cent., 4.4 per cent., 3 per cent., 5 per cent., .7 per cent. and 2.9 per cent., or an average for all six companies of 3.4 per cent. per year.

Of the six new companies, one shows an average profit for ten years of 28.5* per cent.; its dividend rate, however, was only 3.9 per cent., showing that most of this large profit was put into surplus. One year in the history of this company showed a profit of 62.1 per cent. For the six companies the figures are as follows:

Company 1, earnings	28.5 per cent.,	dividends	3.9 per cent.
Company 2, earnings—	2.3 per cent.,	dividends—	13.8 per cent.
Company 3, earnings	5.1 per cent.,	dividends	.8 per cent.
Company 4, earnings—	2.6 per cent.,	dividends—	10.2 per cent.
Company 5, earnings	8.7 per cent.,	dividends	6.6 per cent.
Company 6, earnings—	1.6 per cent.,	dividends—	2.3 per cent.

That is, of six new companies chosen at random, all of them between five and ten years of age, three have lost money.

The figures for the United States branches of companies of other countries are as follows:†

Company 1, earnings	9.3 per cent.,	dividends	6.2 per cent.
Company 2, earnings—	4.7 per cent.,	dividends—	6.8 per cent.
Company 3, earnings	6.7 per cent.,	dividends	2.1 per cent.
Company 4, earnings	5.1 per cent.,	dividends	1.7 per cent.
Company 5, earnings—	1.1 per cent.,	dividends—	7.1 per cent.
Company 6, earnings—	14.8 per cent.,	dividends—	19.4 per cent.

That is, of six companies of other countries three have lost money in this country.

These figures seem to demonstrate several things very clearly,

* This company and its methods are exceptional.

† Dividends to stockholders were taken as balance between remittances to and from home office,

X first, that what money is being made in the business is being made by the old, large, established companies, that new companies are quite as likely to lose as to make money, and that in a general way the prosperity of a company is in pretty close correspondence with its size and standing.

Second. It seems clear that the companies on the whole, have not made an excessive profit. The best companies have averaged 10 per cent. profit for the last twenty years of which half has been kept in the business. In a mercantile or manufacturing business this would be considered a good return, but it must be remembered that in a fire insurance company everything may be lost in a conflagration. And yet these figures are only for the largest companies; the small and medium-sized companies have earned scarcely more than they could have earned if they had invested their money in bonds or mortgages and done no insurance business at all.

This showing is substantiated, first, by the fact that no company of the first rank has gained a footing in the business during the last thirty years, and, second, by the record of companies which in that time have been organized and dissolved. The records show, according to testimony, that out of 213 companies admitted to do business in this state in 1875 there are only 69 of the original number remaining, the other 144 having withdrawn and in nearly every case gone out of business.

In this connection the fact was brought forward that in general the directors of a fire insurance company own only a small part of its stock; the average for the six largest companies is 7 per cent., and for all the companies 20 per cent. It is furthermore a fact that fire insurance companies are not being organized in general by men who are most familiar with financial conditions; it is stated to be impossible to secure money in Wall street for the organization of fire insurance companies and that the money in fire insurance belongs very largely to small investors.

The figures that have been presented seem to show that on the whole the companies have not been making an excessive profit; the question whether the premiums have been too large reduces itself, therefore, to the question whether the expense has been too large. The subject of expense will be considered later.

DISCRIMINATION AMONG CLASSES.

However, it would not necessarily follow, even if the premiums on the whole were right that they were right in detail; that is, it may still be that one class is rated too high and consequently another too low, that the rates in one part of the country are unwarrantably high while the rates in another part of the country are too low, that the rates now are perhaps too high against a time a few years ago when they were perhaps too low.

This in reality is true. To be equitable the rates should measure the hazard; as an actual fact they depend, not merely upon the hazard, but upon competitive conditions. For instance, the rates in general are too high on protected dwellings and small dwelling-stores. This is demonstrated by the fact that these classes of risks and perhaps a few others are referred to by underwriters as "preferred risks" and what is still more to the point, by the fact that the competition for this particular business is very keen. This shows itself by the payment of excessive commissions and by the fact that most companies will not accept from agents the less desirable risks unless they produce also a large amount of the preferred business.

There are, doubtless, classes which are rated correspondingly low. There are some risks that many companies will not write at the schedule rate. In general the class of contents of mercantile buildings is often an unprofitable class at current rates, at any rate it is less profitable than the buildings themselves.

Now, why should there be these differences? What is the force that prevents the rates from corresponding to the hazard? The answer will be more evident in the light of this further observation, that in general the rates are too high on low-rated risks and too low on high-rated risks, that is in general, that hazardous classes are paying less than they ought to at the expense of non-hazardous classes which are paying more than they ought to. And the reason for this is a very natural one, that it is easy to collect a small premium and hard to collect a large one.

The hazard of protected dwelling houses, for instance, is so small that it is an easy matter to collect more than is sufficient; the policyholders are contented in their ignorance; in general the property they own is small and there is no pressure, and particu-

larly no united pressure, brought upon the companies to reduce their rates. On the other hand one who pays a larger premium on a hazardous risk is keen to get every concession and particularly as such risks are likely to cover very large values. The consequence is that the companies in general find it impossible to hold the rate up stiffly on such classes.

The fact that rates are controlled by competition, and not entirely by the hazard, is shown also by the experience of the companies on sprinklered risks. The Mill Mutuals, as is well known, were the pioneers in what has resulted in a revolution in the construction and equipment, from a fire-preventive point of view, of factories. The plan of standardization and inspection which was adopted by the Mill Mutuals, and which is referred to in more detail elsewhere in this report, was so successful that the stock companies, in order to retain even a share of this business, were forced to adopt the very same plan. To this end associations were formed, one with headquarters in Hartford, and one with headquarters in Chicago, known as Factory Insurance Associations. Some twenty of the principal companies are members of these organizations.

The technical work of these associations consists in examination of plants, the preparation of plans for sprinkler equipments and other fire-preventive devices and inspections to see that these are properly installed and maintained.

The significant point about these associations, in the present connection, is, however, the fact that a risk is not turned over to them by the companies except under pressure of competition from the Factory Mutuals.*

A risk which was insured in stock companies and not threatened by the Mutuals would not be able to obtain an inspection by the Factory Insurance Association. But when there is danger of its being taken by the Mutuals the Association is put upon the risk and the rate may drop in some cases very materially from what it had previously been, even under the same conditions.

The facts then are that while as a general thing rates are fairly

* This is not strictly true, as within a few months these associations have adopted the more liberal policy of forestalling competition, but the condition has been as described up to very recently.

well graded according to the hazard, and while the tendency of schedule rating is strongly in this direction, the rates on certain classes, in particular the so-called "preferred risks" and the "sprinklered risks" are governed by competitive conditions rather than by the hazard alone, and that in general the rates on these classes are likely to be unwarrantably high unless they have been reduced by the competition of non-stock companies.

The situation is a perfectly natural result of competitive conditions. The grocer in the same way sells sugar and flour very close to cost and makes most of his profit on coffee and tea and spices.

But it is right here that we begin to get some clear light on this matter of combination. As long as the companies act in open competition they should evidently be governed by the laws of competition and, let him who bargains beware — he may pay too much for his insurance, he may pay too little, but he cannot seriously complain, for he knows the conditions of the game — but the minute that the companies begin to combine the laws of competition are superseded by the laws of equity; the price is no longer the price that can be wrung out of the public in an open barter, but it is a price based strictly on the hazard.

This principle will be readily admitted by underwriters. They very commonly speak of insurance as a tax, meaning by this that the companies are merely acting as agents to collect from the many who are exposed to a hazard a contribution to be applied to the few who suffer the loss. But that a tax should be *equitable* is at the very basis of the idea of a tax. Conclusive evidence that the underwriters readily admit that with combination should be associated equity of rate is evidenced by their willingness to discuss his rate with the insured and to go to some length in attempting to justify it. In fact it is unquestionable that the whole tendency of combination has been toward equity in rates. Schedule rating is, of course, the greatest factor in this, making discrimination impossible and insuring essential equity between classes.

Our conclusion then is that combination and equity in rates should be inseparable; not only has experience shown that equitable rates are impossible in the absence of combination, but conversely, if there is to be combination then out of it must (by the help of law if competition is not sufficient) come equitable rates; that is, if

companies are to be allowed to combine then it must be only on the assurance that the rates will be equitable.

The State is certainly justified in taking any steps necessary to see that this condition is maintained. The question that now arises is whether it is necessary and desirable for the State to undertake to regulate rates or whether the force of competition properly guarded by publicity, can be trusted to accomplish this result.

The question of competition in fire insurance has not been understood. It has been generally assumed that a combination of fire insurance companies was exactly like a trust, that there was no internal competition among the members of the combination. This is certainly not so. In reality the companies that form a tariff organization are in the most intense competition with each other and what the combination chiefly does is to prevent this competition from producing havoc with the rates. The existence of competition is unquestionable; in fact, it makes the continued existence of a combination always a matter of uncertainty. Tariff organizations are not in general longlived. There is almost always a certain amount of underhand cutting of rates, and when this condition becomes unendurable the organization is abandoned, a rate war ensues and a new organization is formed only after the companies find that for their very existence they must get together again.

The tendency of the companies inside of tariff organizations is asserted to be in general toward the lowering of rates, pressure being brought upon a particular company or companies by the insured and through them upon the organization.

Testimony has been given by several witnesses, and the same statement is often seen in print to the effect that the companies do not desire to see excessive rates because of the competition of new companies that will be attracted into the business.

The nature of competition in fire insurance is certainly very different from that in most other enterprises. To compete with a railroad it is necessary to build a new line, and when it is there it is there once for all and must be maintained unless the investment is to be a total loss. But the investment in a fire insurance company consists entirely of securities; there is no plant to speak of, even the agency system consists for the most part of agents who

are already in the field for other companies. It is, therefore, a business that capital can be very readily thrown into and from which it can be just as readily extracted — usually by reinsuring.

It is a business, furthermore, in which competition is very intense — for this reason: outside of the large cities the business of the country could be done by a dozen companies, but in the large cities there is a dearth of insurance — this is because of the conflagration hazard — 150 companies are bidding for the business that could be done by a dozen; the competition is, therefore, very keen, since it is necessary that each should have a slice to balance the business which is exposed to a conflagration.

It is asserted that the conservative companies much prefer the stable conditions that prevail under normal rates to the unstable conditions that result when the rates are excessive.

Beside the competition of companies that are inside the organization, board companies, so-called, there is in general a competition from the non-board companies. These companies, not being members of the organization, are not bound to observe any particular schedule of rates. As a matter of fact they inform themselves with regard to the board rates and to a degree observe them, cutting the rate where it becomes necessary to secure desirable business. The competition of the non-board companies of course tends to keep the board rates down. In most parts of the country there are many non-board companies. In New York city, however, the companies that are authorized by the state are all members of the Exchange.

Beside the competition of the board companies with each other and with non-board companies there is a considerable competition from the Mill Mutuals, the Lloyds and the Town and County Co-operatives.

The inequities with regard to classes have been spoken of and will be reverted to later. Inequities in rate with regard to place certainly exist. However, so far as New York state is concerned, they do not seem to be serious. As to the state as a whole the average rate is the lowest of any (with the exception of Delaware) of the United States. Such inequities in rate are certainly much fewer than they used to be.

The fact has been referred to that "preferred risks" and some others are confessedly rated too high, irrespective of the fact that there may be other inequities which are masked by lack of definite knowledge. It is worth while to ask whether this inequity is a serious one. First, as to the owner of the "preferred risk:" he is paying only a small premium at most and does not complain; nevertheless the fact remains that he is paying more than his share of the fire loss. Second, as to the agent and the company that receives the premium: this is a more serious matter in its consequences, and will be discussed later under the general subject of agents. Third, as to the risks that are paying too little at the expense of others: the most serious effect here is that since the rate is not made proportional to the hazard there is insufficient incentive to the insured to improve his risk. Any underrating of hazardous risks is an economic mistake. It is a mistake to assess a conflagration charge over the country as a whole; it ought to fall on the cities and districts where it belongs, otherwise, the country is paying for the hazard of the city, the city grows at the expense of the country. The congestion problem is serious enough; it ought not to be fostered by a maladjustment of insurance rates.

It may be said with regard to maladjustments of rates that it is a matter that will take care of itself if given publicity. The rates on dwellings have in general been coming down for years, and the companies will reduce them still more if the public demands it. They will not readily do this, however, until they are pressed to it. If, on the whole, the premiums are not excessive, it, however, would mean an increase of rates in certain other classes.

CLASSIFICATION.

This leads up to the general subject of scientific rating. In spite of modern developments in schedule rating the fire insurance business to-day is still done in a very unscientific way. To a certain extent it must always be somewhat unsatisfactory as compared, for instance, with the exact methods of life insurance. The reasons have already been referred to, the very great complexity of the problem, the changing conditions, the presence of an indeterminate conflagration hazard. This, however, is not a sufficient excuse for abandoning the whole problem and doing nothing, dis

missing the whole subject with the observation that fire insurance is nothing but guesswork and never will be anything else; and this is the attitude of many underwriters.

It is simply a very complicated and difficult problem in classification; if anything is to be done with it this must be recognized and it must be dealt with accordingly.

All problems in classification are difficult and different from all others; this one undoubtedly is particularly difficult.

Practically the only light that is thrown upon the hazards in fire insurance is that of experience; and furthermore, the experience to be worth anything must include not one but many similar cases. The gathering together of this experience can to a degree be done by the mind unaided; so gathered and assimilated it becomes known as "underwriting judgment." In addition to all that can be done by the help of exact classification there will always be opportunity for all that the cleverest underwriter has of underwriting judgment.

Two objections that are frequently made to classification in fire insurance are, first, that, if the classes are made large enough to afford a proper average the class will be so comprehensive, will embrace such a large range, that it will lose its practical value; second, that if it is made definite enough to be of practical value the number of examples of the class will be too small to yield an average. But these objections are not peculiar to fire insurance; they are the two extremes between which any problem in classification must be kept; and while they are important they are commonplace; they are taken for granted.

There are two principal uses for classification — and in this it is assumed that schedule rating is contemplated. The first use is to furnish detailed knowledge with regard to the elements of the hazard upon which to base the charges of the schedule. This is confessedly a very difficult matter, and it is freely admitted that only the main points could be ascertained in this manner; most of the detail would have to be put in with the help of underwriting judgment.

The second use for classification is as a test of the correctness of a schedule when made. The very fact that the details of a schedule must be largely a matter of underwriting judgment makes it of

the greatest importance to be able to subject the schedule when made to a test to see how nearly right this judgment has been.

The obvious first test to apply is to see whether it has produced the proper amount of premiums, to be gauged, of course, by the fire loss, on the business as a whole. But this is only a crude test; the schedule may be producing too much revenue on one class and too little on another. It becomes desirable, therefore, to test it on different classes, and in a great variety of ways. If the schedule should stand all these different tests it would be pretty conclusive evidence that it contained no serious defects.

The practicability of classification in fire insurance has been increased tenfold by the modern sorting machine, such as is used in the tabulation of the United States census; in fact, it is not too much to say that this machine is capable of revolutionizing any business in which a detailed mass of statistical knowledge is important. Problems which before would have called for hundreds of clerks and volumes of weary tabulation can be run off on a machine with an incredible degree of efficiency. The information with regard to the individual is punched on a card and these cards so punched can be sorted to make any desired exhibit. It is absolutely within the bounds of practicability that all pertinent information with regard to each risk in fire insurance should be punched upon a card and when so done and filed it becomes only a mechanical process to separate any information that is desired: for instance the amount at risk and the premium receipts in any given portion of the city; the amount of premium receipts, the amount at risk and the losses in any given class or on buildings of any given type of construction.

The scientific determination of rates has been highly developed in life insurance. Up to the present, however, the problem has been very simple for insurance was carried on in practically only one class, that of standard lives, that is, persons who could pass the medical examination. Now, however, as that field has been pretty fully covered, the companies are pushing into the field of impaired lives, substandard lives so called. When this is done their problem will be essentially the same as the problem in fire insurance, that is, a company will make a special rate for instance for the following risk, taking all the facts as given into account:

Age:—35. Occupation:—Printer.

Family history:—Mother died of consumption, father died of Bright's disease.

Personal health:—Over-weight, recently recovered from pneumonia.

It will be readily seen that these are the elements of the hazard just as details of construction, occupancy and exposure form the elements of the hazard in fire insurance; and in fact one of the companies at least is already issuing rates for substandard lives that are based on a schedule whose principle is similar to that used in fire insurance.

The difference, however, is this: the companies, as a basis for what they plan to do, that they may act intelligently in making rates, have united, through the medium of the Actuarial Society of America, to combine their experience. The work is thoroughly planned and well under way; the cards are being punched in the separate offices; they will be united and classified by the sorting machine into a great variety of groups. The result will be a very complete statistical study of the influence of occupation, locality, family history, and personal impairment upon length of life; it will be founded upon the experience of a large number of companies on hundreds of thousands of lives.

This is very different from anything that has been done with the the corresponding problem in fire insurance. Strange as it may seem, rating organizations in the fire insurance business do not themselves possess any classified experience. The companies to be sure keep their classifications, but these figures are not combined and the rating is done by a committee which makes the rates upon the basis of a comparison of the members' own underwriting experience. Attempts have frequently been made by underwriters to induce the companies to combine their experience as a basis for use in making rates, but these attempts have invariably failed.

The reason for this is that a company considers its experience a trade secret and is so jealous of it that it will not submit to its being used for the public good. There is in Chicago an organization of about twenty companies which have combined their experience but it has not been done for the purpose of making more equitable rates but for the benefit of the companies themselves which will

thus be advised what business they can with profit accept and what they had better reject.

The situation here is perfectly clear. A trade secret in fire insurance can be nothing more than the fact that a company has found certain classes profitable and certain classes unprofitable at existing rates and this means nothing more than the fact that the rates on certain classes are too high and on others too low. No other information that is capable of being used to show a company how it can make money in view of existing inequities in rates is equally capable of being used to make the rate equitable to start with.

This is exactly the point where we find the companies falling short in that balance which must subsist between combination on the one hand and equity on the other. The companies recognize the *principle* that in return for the right to combine they must make equitable rates and it can be said that in general the tendency is quite in line with this but in actual practice they fall short. But what is there for it save that they should go the whole length and throw these so-called trade secrets into the mixing pot that out of them may come truly equitable rates.

A few perfectly candid underwriters answer that this would take all the fun out of the business and leave it a game that anyone could play. The answer is that very likely this is so; it may perhaps not be as interesting to live now as it was in the Middle Ages. The fact is, however, that this is not the Middle Ages, that the world is moving in a certain direction and the wisest thing one can do is to find out what that direction is — and act accordingly.

It is perfectly certain that the public has a right to demand and is going to demand that in return for the right to combine the companies shall furnish equitable rates and not only that but that they shall put themselves into the position to *demonstrate* that they are furnishing equitable rates so far as that is humanly possible.

The old type of underwriter is passing. He did not believe in preventing fires; fires were what made business for the underwriters; it was the function of insurance simply to distribute the fire loss and if the people preferred to burn their property it was not his business to interfere; it was his business to see that plan

of premiums were collected to pay the losses,—it was not important who paid them so long as they came in; incidentally, however, he had a shrewd eye for the business in which there was a good profit and let his less keen brother take the rest.

That type has nearly gone. The new underwriter has his face turned in quite another direction. His motto is: "Equitable rates and fire prevention and a steady profit, all through combination."

COMBINED LOSS EXPERIENCE.

Since the underwriters have failed to take the initiative in the collecting of a combined loss experience and since it is necessary, if rates are to be equitable and demonstrably equitable, that such figures should be available it seems inevitable that the State should undertake this work. It would fall in very naturally with its other work along the lines of publicity.

Each company should report to the Superintendent its classified experience for the year and for the whole of the country. Such a plan, however, has so many dangers and so many difficulties that it should be adopted only after most careful consideration. At present each company has its own separate method of classification; most of these are very bad. If the companies were to report to the State it would, however, necessitate the adoption by all of a uniform system. It would be necessary to plan such a system with the most extreme care. Another danger lies in the possibility that different states might demand the experience of the companies classified in different ways; this would plunge the companies into saddening confusion.

While, therefore, it is certainly desirable that loss experience should be gathered and made a matter of public record no state should enter upon this without the most careful consideration. It is properly a matter which should be handled by a committee of the National Convention of Insurance Commissioners in conference with the companies in the same way that the subject of uniform blanks is handled.

INSURANCE AND FIRE PREVENTION.

There is nothing more interesting in the fire insurance business to-day, no, in the *insurance* business, for it is coming or has come

all along the line, than the way in which the *insurance* of losses is broadening its grasp to take in the *prevention* of loss.

This is not an easy matter to understand but it is of profound economic significance. For if an agency which primarily is designed to prevent the *ill-effects* of loss can be enlisted in the work of preventing the loss itself, we have an amazing potentiality for good, all the more so that this connection has been developed along purely economic lines.

The matter is on the face of it hard to understand for apparently by preventing fires underwriters are cutting out the very source of their revenue; and yet it is possible to go a long way toward explaining this connection between insurance and prevention on purely economic grounds.

In the first place the establishment of schedule rating, the analysis of the hazard, the penalizing of definite elements of hazard, puts in the hands of the public an instrument which it can use with tremendous effect, even without encouragement from the companies, to improve conditions in the way that has already been referred to. The companies, however, have co-operated in this work, not perfectly to be sure, and yet on the whole very acceptably.

So much schedule rating does and in a more or less mechanical way. But beside this the companies are carrying on an active crusade to reduce fire loss. The work of the National Board of Fire Underwriters has already been referred to and while this is the principal single agency which is engaged in this work it is helped along to a degree by local boards and other organizations.

While it is undoubtedly true that an underwriter who has once become interested in fire prevention develops an interest in it as a citizen that goes beyond his interest as an underwriter it is possible to account for his interest on business grounds.

THE CONFLAGRATION HAZARD.

In the first place the conflagration hazard is an unspeakable menace to the underwriter as well as to the public. So far as ordinary losses go there is no particular difficulty; they are sufficient among themselves to give a remarkably stable average. In this field a large, well-established fire insurance company is near!

as stable as a life insurance company. But the conflagration hazard is totally different. Great conflagrations fortunately do not come often but this very fact makes it impossible to obtain a workable average and, as insurance is based upon general average, conflagrations are strictly speaking outside the proper field of insurance. But as a practical matter they must be included, partly because of the difficulty of defining a conflagration and partly because public necessity demands some agency that shall do this work even though imperfectly.

During the last forty years there have been four large conflagrations in which the insurance liability must have been in the neighborhood of \$400,000,000. Assuming that these belong properly to a period of fifty years and that the cost of them should reasonably be assessed to the twenty largest cities of the country it can be shown that on this basis something like 30 or 40 per cent. of all the premiums collected in those cities were necessary for conflagration losses alone; that is, that on this basis the cost to New York each year of its conflagration hazard, outside of what it may pay for the maintenance of the fire department, is in the neighborhood of ten million dollars a year. But while this affords some notion of the size of the conflagration hazard it is of very little practical assistance to an insurance company, simply because the law of averages does not work; a fire may start in New York to-day which will make such calculations ridiculous and bankrupt most of the companies of the world.

It is no wonder that in the face of this ever-present and yet entirely unknowable menace that the companies do not enter with interest into the refinements of rating. This explains, however, why the companies are interested in preventing fires in large cities. They recognize that the conflagration hazard must be stamped out; it cannot be tolerated, there is no economic machinery which can cope with it; it must be stamped out just as tuberculosis must be stamped out.

But there is still another reason why the underwriter is interested in the reduction of fire loss. His premiums are paid sometimes several years in advance against losses that have not yet occurred. If the underwriter can keep the loss ratio continually falling there will always be a larger margin of profit in the business, even though from time to time premiums are adjusted to the

lessened hazards. But if the loss ratio is rising, before the premiums have time to catch up, the losses will have been made. Years ago when the margins were large this was not clearly felt but to-day it unquestionably is strongly operative and indeed is sufficient in itself to explain the interest of the underwriter in fire-prevention.

There is a strong analogy, which should not be passed by, between the underwriter and the physician. Both are primarily in the business of curing ills, but both are coming more and more to be concerned with preventing ills. That in either case there can be this hearty union of the two functions is a cause for public congratulation; publicity and education in the field of medicine and underwriting will lead to the gradual elimination of both disease and fire.

In answer then to the underwriter who says that equitable rates make the business uninteresting, it can be said that the business is changing: the interest in the business to-day is coming to lie in fire prevention and the most progressive underwriters are those who most clearly see these tendencies.

SUMMARY.

As this subject of rating has turned out to be so comprehensive, it is desirable to make a summary of the whole matter. First, it is recognized that a rate equitably should depend upon the hazard; that the hazard, however, is known in general only by experience; that for this no one company has a broad enough experience of its own and that, therefore, the making of equitable rates demands co-operation; furthermore, since the same rates are needed by all the companies, economy would suggest that the work should not be duplicated.

Second. It has been demonstrated by the experience of all times and all places that open competition in fire insurance is an unstable condition which leads to the general weakening of the companies, and eventually to the elimination of small companies further that under open competition there is always discrimination in favor of the policy-holder with influence.

The only alternative to open competition is, however, combination not merely to make but to maintain rates. This in general or certainly to a degree makes it impossible for the public to

obtain insurance except at the prices fixed by the combination. This inability to bargain is resented by the public and the rate-making organizations have been referred to as trusts and combinations in restraint of trade, and in many states so-called anti-compact laws have been passed forbidding the companies to combine either to make or maintain rates.

Third. The effect of the anti-compact laws has been not to bring back a state of open competition, for this, as has been said, is an impossible condition, but to introduce a weakened substitute for combination, the selling of "advisory" rates by an independent rater. These rates in general are observed but as the companies are under no agreement to maintain them, the way is open to gross discrimination. The tendency of independent rating is in general toward higher rates and toward a weakening of the beneficial economic effects of schedule rating. The discrimination in anti-compact states has become so offensive that there is a strong movement toward State regulation.

Fourth. State regulation is recognized as a far more logical condition than one in which anti-compact laws prevail, and in the main the objection to it are practical rather than theoretical. The principal question to decide is whether the conditions warrant so radical a step and whether it is likely that conditions would thereby be materially improved.

The most serious theoretical objection to State rating is that it would be likely to make it impossible for a company to recoup itself after a conflagration. The practical objections lie in the possibilities of its being used for political effect and the fact that the State does not possess and could not obtain, except with great pains and expense, the expert knowledge upon which to make rates properly.

Fifth. It does not appear that there has been an excessive profit in the business; this would seem to indicate that the premiums have on the whole not been too large. Discrimination between classes is, however, found to exist, particularly in the too high rating of "preferred risks." These are conditions, however, which will be cured by publicity and the general tendency toward equitable rating is unmistakable.

Sixth. Not only is combination necessary for equitable rating,

but conversely the making of equitable rates is the consideration which should be demanded of the companies for the right to combine.

Seventh. It is believed that competition and publicity are sufficient to insure this, particularly as the manifest tendency of schedule rating is in this direction.

Eighth. It is shown that there is intense competition among the members of rate-making organizations and that this condition differentiates such organizations from so-called trusts, that excessive rates are not desired as tending to lead to a dissolution of the combination and also to the organization of new competing companies and that a strong competition exists in most parts of the country from non-board and mutual companies.

Ninth. As the companies have failed to co-operate in collecting a common loss experience which would serve as a basis for equitable rating, it is believed that steps should be taken toward the acquirement by the State of such statistics.

It is the belief of this Committee that, in the present condition of the business, competition can be relied upon to keep the rates equitable, particularly if re-inforced by publicity. This Committee fails to find any condition which would warrant the extreme step of turning the rate making over to the State and it does not recommend State regulation of rates beyond certain steps looking toward closer supervision of rate-making bodies and the securing of proper publicity. The Committee believes that State interference with rates has not been beneficial and has been brought about upon the wholly theoretical grounds that combinations in fire insurance were a menace to the people which an actual investigation of the facts fails to disclose. This Committee believes that a purely academic view of what combinations in fire insurance might do should not be allowed to usurp the place of what actual facts under a reasonable interpretation seem to show.

INSURANCE COMPANIES AND LEGISLATION.

The interest of insurance companies in defeating adverse legislation is due as much to the inconvenience of adjusting themselves to changed and awkward conditions as to any real inherent concern in the matter. The public must have insurance and the

public must pay for it. If adverse legislation makes it harder and, therefore, more expensive to do the business the burden falls upon the people, not upon the companies. The difference mainly is that the companies can do their business more agreeably and more rationally when the laws are reasonable. There should certainly not be ill-considered legislation in a business which is so nearly mutual in its nature, where so obviously and so inevitably the entire cost falls upon the public.

TAXATION.

The taxation of insurance companies is a good example of this. Insurance companies are taxed a percentage upon their gross premium receipts. This is on the theory that the companies should pay for the cost of supervision; in reality, however, the taxes collected from insurance companies far exceed the cost of maintaining the Department of Insurance. No reason has been discovered in this inquiry why the burden of government should fall more heavily on this business than on other forms of corporate activity beyond the fact of the ease of collection of the tax.

Apparently the tax comes out of the profits of the business; in reality it comes out of the pockets of the policy-holders. There is no way of preventing this; it is inevitable. There is even a regular charge in the Mercantile schedule for "taxation and adverse legislation."

The question then is whether a tax that falls upon the individual in exact proportion to his fire hazard is justifiable. It is indeed, for this should be exactly the incidence of the tax for the maintenance of the fire department, for in the long run the fire department will be called upon just in proportion to the hazard.

The real injustice of the tax lies in the fact that the insurance companies are made to collect it; the result thus is to disguise the moral effect of the fact that a man who has a fire hazard is penalized for it and to subject the company to abuse for the size of its premiums. Besides that, if the tax is collected through the companies the man who does not insure escapes paying his share; to this may be said in answer, however, that every plan of taxation falls more heavily upon the provident than upon the improvident.

The further observation might be made that since the agent

takes his 20 per cent. commission out of all the premiums he collects, that it is altogether likely that he gets some considerable share of that part that he collects for taxes, probably very much in excess of what it costs to collect taxes directly. This method is then wasteful in money as well as in moral effect.

THE VALUED POLICY LAW.

In a number of states there is a law called the "valued policy law." This law provides that in the case of a total loss, the face of the policy shall be taken as conclusive evidence of the amount of the loss, that is, that in the event of a total loss the company becomes liable for the full face value of the policy. Wisconsin was the first state to pass such a law, and it is said that the cause of its passage was the fact that the farmers had been sufferers at the hands of sharpers who sold lightning rods and insurance, and when the farmer came to collect on his losses he found he was greatly over insured, and that, even in the case of a total loss, he could collect only a part of the sum that he had paid premiums on.

The law was designed to prevent over insurance. Incidentally, however, it breaks down one of the fundamental principles of insurance,—indemnity. One can be indemnified only for what he has lost; now if a house worth \$7,000 is insured for \$10,000 and the owner recovers \$10,000 in case it is completely burned, he has received only \$7,000 of *indemnity*; the other \$3,000 was won on a gamble, for the owner of the house was willing to pay the premiums on this extra amount in order to have the chance to win it if the house burned. But, when the event upon which the gamble depends is something that is within the control of the person interested, we have a "moral hazard," namely, in this case, the hazard that the insured will either set fire to his house or that he will relax the carefulness which he would have maintained if the burning of his house were going to mean a loss instead of a gain.

A law which would really prevent over insurance would be a good thing, but the valued policy law is impracticable from this point of view. It was no doubt assumed that the law would operate to make the agents assure themselves that in every case

the face of the policy was not in excess of the value of the property. But as a practical matter this is impossible under existing conditions. It would require not only a careful inspection of the property by the agent, but in many or most cases a detailed appraisal, and the cost of such work,—which would, of course, have to be borne by the policy-holder,—would double the rates. Besides that, it would still be ineffective, for the value of the property can so easily change: conditions can arise—for instance a business ceases to be profitable—which will make the property deteriorate in value. There is a serious moral hazard whenever a property, for which there is no demand and which is not producing an income, can be sold, by setting fire to it, to an insurance company for more than it is worth.

Desirable as it would seem to be, theoretically, to place upon the insurer the duty of determining values before the insurance is effected, as a practical matter it cannot be done; it is a part of the duty of the insured himself, for he of all persons is the one who knows. In the process of effecting insurance there are many different pieces of work to be done; many of these quite rightfully fall upon the company, but there are certain ones which must of necessity devolve upon the insured. Some of these are made warranties in the contract, but others are automatically fixed by the form of the contract. The duty, or self-interest, of the insured in determining the value of the property is fixed by the provisions of the ordinary policy that the payment by the company shall be only for loss actually sustained, that is the policy provides indemnity but in no case beyond the so-called face of the policy.

Of course, anything that can be done to make the insurer careful not to over insure is desirable, provided this good is not secured at too great a cost. A slight step toward this and one that might go some distance toward mitigating the hard feelings of the insured would be a provision that, if upon settlement of a loss the property was found to be over insured, the excess premiums were to be returned.

There is no question that theoretically and practically a valued policy law is against public policy; and yet it must be admitted that the actual effects of it in the states where it is in operation are not so serious as might be anticipated. The reasons for this are perhaps two: the companies have largely ceased to write

business on which under this form of policy there is a serious moral hazard; and, second, the effect of the law has been largely nullified in the courts in their interpretation of "total," thus making the proportion of "total" losses in which the valued feature is operative, very small.

It can be said then in general about the law that where it is in free operation it must and does increase the moral hazard, but that in actual practice its effect is, to a certain extent, to prevent free insurance, but in effect it is largely a dead letter.

THE CO-INSURANCE CLAUSE.

In much the same way that the rate in life insurance depends upon the age of the insured so the rate in fire insurance depends upon how large a percentage of the value is insured. This is not at all evident at first sight, and must be explained.

Let us take so extreme a case that the force of the principle will be compelling. Suppose two stocks of goods of the same character and similarly situated, the only difference being that the first is worth only \$5,000, while the second is worth \$100,000. Let us suppose that in each case there is an insurance for just \$5,000, that being the entire amount of insurance. Now under which of these policies has the underwriter more at risk? In the first case it will take a total loss to exhaust the insurance and a 5 per cent. loss will amount to only \$250, but in the second case any loss that is over 5 per cent. of the value will exhaust the whole amount. It is vastly more likely evidently that there will be a loss of 5 per cent. (or over) in the second case than that there will be a total loss in the first case, for manifestly there are many fires that burn 5 per cent. or over to the few that burn all. The insurance company could therefore by no means afford to sell the insurance in the two cases for the same price. This is the simplest possible demonstration of the fact that the insurance rate must depend upon the ratio of insurance to value. In the first case this ratio was 100 per cent., in the second case 5 per cent.; the rate must be higher as the ratio becomes lower.

This can be stated in another way: the real cost of the insurance depends upon the average loss payable under the policy, but this will manifestly be greater if the values are greater.

This can now be brought out in more detail. There are statistics that show that on a certain class of buildings there are approximately the following losses for every \$100 worth of property value:

On the average, out of every 100 fires:

82 that do a damage of less than \$10 on the average \$2, making altogether a loss of.....	\$164 00
6 that do a damage of less than \$20 and more than \$10 on the average \$14, making altogether a loss of	84 00
8 that do a damage of less than \$30 and more than \$20 on the average \$25, making altogether a loss of	75 00
2 that do a damage of less than \$40 and more than \$30 on the average \$35, making altogether a loss of	70 00
1 that does a damage of less than \$50 and more than \$40 on the average \$45, making altogether a loss of.....	45 00
1 that does a damage of less than \$60 and more than \$50 on the average \$55, making altogether a loss of	55 00
1 that does a damage of less than \$70 and more than \$60 on the average \$65, making altogether a loss of	65 00
1 that does a damage of less than \$80 and more than \$70 on the average \$75, making altogether a loss of	75 00
1 that does a damage of less than \$90 and more than \$80 on the average \$85, making altogether a loss of	85 00
2 that do a damage of less than \$100 and more than \$90 on the average \$99, making altogether a loss of.....	198 00
100 Total	\$916 00

That is, every 100 fires burn altogether \$916 worth of property, supposing the property in each case to have had a value of \$100. Now if on each of these houses just \$10 of insurance had been carried for every \$100 of value, the losses to the companies would have been as follows:

82 losses of \$2 each, making altogether.....	\$164 00
18 losses of \$10 each, making altogether.....	180 00
100 Total	\$344 00

It is obvious that on the eighteen losses in which the damage was more than \$10 only the face of the policy would be payable. If we assume that there is one fire out of every 100 houses at risk, 100 fires will represent 10,000 risks and the premium that must be collected from each of these 10,000 risks to pay this loss of \$344 will be $\$344/10,000$ or 3.44 cents. This, it is understood, is the net premium without any loading for expense. Three and forty-four one hundredths cents is the actual premium, but the rate, based on \$100 is ten times this, or 34.4 cents; that is, \$10 of insurance at the rate of 34.4 cents per \$100 amounts to a premium of 3.44 cents.

Now in an exactly similar way, the cost to the company of carrying \$20 of insurance can be computed; there will be:

82 losses of \$2, making altogether.....	\$164 00
6 losses of \$14, making altogether.....	84 00
12 losses of \$20, making altogether.....	240 00
100 Total	\$488 00

To pay this loss each of the 10,000 risks must be assessed $\$1,488/10,000$ or 4.88 cents. This is the premium for \$20 of insurance but the rate, on the basis of \$100 is five times this or 24.4 cents; that is \$20 of insurance at a rate of 24.4 cents per \$100 will amount to a premium of 4.88 cents.

This same principle can be carried out for any given amount of insurance. Take just one more case: suppose the insurance is \$80. There will then be payable by the company:

82 losses of \$2, making altogether.....	\$164 00
6 losses of \$14, making altogether.....	84 00
3 losses of \$25, making altogether.....	75 00
2 losses of \$35, making altogether.....	70 00
1 loss of \$45, making altogether.....	45 00
1 loss of \$55, making altogether.....	55 00
1 loss of \$65, making altogether.....	65 00
1 loss of \$75, making altogether.....	75 00
3 losses of \$80, making altogether.....	240 00
100 Total.....	\$873 00

The sum that must be collected from each of the 10,000 risks will be \$873/10,000 or 8.73 cents. This is the premium for \$80 of insurance, but the rate on the basis of \$100 will be $\frac{5}{4}$ of this or 10.91 cents, that is, \$80 of insurance at a rate of 10.91 cents per \$100 gives a premium of 8.73 cents.

In the table below are presented the rates that will correspond to various percentages of insurance to value:

If the insurance is 10% of the value, the rate should be....	\$0 34
If the insurance is 20% of the value, the rate should be....	24
If the insurance is 30% of the value, the rate should be....	20
If the insurance is 40% of the value, the rate should be....	17
If the insurance is 50% of the value, the rate should be....	15
If the insurance is 60% of the value, the rate should be....	13
If the insurance is 70% of the value, the rate should be....	12
If the insurance is 80% of the value, the rate should be....	11
If the insurance is 90% of the value, the rate should be....	10
If the insurance is 100% of the value, the rate should be...	9

This is not only a practical demonstration of the fact that the rate in fire insurance must depend upon the percentage of insurance carried, but, if the figures upon which it is based were correct, it would be a determination of what the net rate should be. It is understood, however, that the particular figures here given are only in way of illustration; the principle that the rate falls as the ratio of insurance carried increases holds whatever the figures that are used, even though large losses were relatively more frequent than small ones.

The principle that is here established is that the rate in fire insurance must equitably depend not only upon the class of risk, but upon the percentage of insurance carried, and that for example a rate of ninety-three cents which might be right if 80 per cent. of insurance were carried would be much too low if only 30 per cent. were carried.

The situation is exactly the same as in life insurance where the rate must equitably depend upon the age. A premium of \$23 for a man 25 years old would be far too low for a man 65 years old. If insurance were sold to these two men at the same price the effect would be that the young man would be helping to pay for the hazard of the older man and, still more to the point, that eventually young men would refuse to enter into such an unfair bargain and the company would be doing a business only with old men for whom confessedly the rate would be too low.

The principle is exactly the same in fire insurance. If a man who carries 80 per cent. of insurance is charged the same rate as a man who carries only 30 per cent. the effect is that the man who carries 80 per cent. will be helping to pay for the hazard of him who carries only 30 per cent., and still more to the point that the tendency would be, under this unfair arrangement, for men to refuse to insure for the larger amount. But that this "adverse selection" does not operate so strongly as in life insurance is due to two causes, first, that the principle is not so clearly seen as in life insurance, and, second, that full, or nearly full insurance is in most cases needed at any price; this is particularly so where the property is mortgaged, the conditions of the mortgage requiring that the property be well covered by insurance. The situation then is this: equity to the policy-holder demands that the rate should be adjusted to the percentage of insurance carried and to a certain extent the result is, if this is not done, that insurers will carry less insurance than conditions demand.

Now, it is impossible to base a rate upon the percentage of insurance to value, unless this percentage is known. But to know it means to know the value of the property and here we are brought up against the same difficulty that arises in the case of the valued policy, namely, that, as a practical matter, it is impossible for the company to ascertain values. In the consideration of the valued policy law we have already reached the conclusion that this work

must devolve upon the insured for the reason that he, if anybody, is the one who knows the values, at any rate he ought to know.

That the responsibility belongs with the insured is recognized in an agreement known as the co-insurance clause, in which the insured warrants that he will maintain at least a certain specified ratio of insurance to value and, *failing so to do, he shall be considered to be himself an insurer for the deficit.*

That is, a failure to maintain the provisions of this warranty, instead of tending to invalidate the insurance, simply brings in the insured in a new rôle, namely, as insurer for the balance by which the actual insurance that he carries falls short of what he warranted to carry.

Or, to state it still differently, by the agreement the warranty is automatically observed because at the instant that the insurance in companies falls short of the required amount the insured himself enters as a "co-insurer."

This, when understood, is reasonable, but its consequences are not easily seen. To understand its workings completely, it is necessary to take some concrete cases.

In the following examples an 80 per cent. co-insurance clause will be understood, that is, one in which the insured warrants that he will keep his property insured for at least 80 per cent. of its value. Only cases will be considered in which the insured fails to live up to his agreement, as, of course, otherwise the settlements will be the same as though there were no such clause.

Case I.

Value	\$100,000
Insurance	50,000
Loss	20,000

Here the agreement called for \$80,000 of insurance; the policy-holder, is therefore, a co-insurer for \$30,000. The insurance therefore stands:

Companies	\$50,000
Himself	30,000
Total	\$80,000

On any loss, therefore, the companies contribute $\frac{5}{8}$ and he himself contributes $\frac{3}{8}$; on the loss of \$20,000, therefore, the contributions are:

Companies	\$12,500
Himself	7,500

That is, in spite of the fact that he carries insurance of \$50,000 he is able to collect only \$12,500; the balance of the loss he is compelled to stand himself; why? because his rate was based on the assumption that he would carry 80 per cent. of insurance; in reality he carried only 50 per cent. of insurance and so doing he should have paid a higher rate. The rate that he paid was not sufficient under these circumstances to buy complete indemnity and the deficiency was measured by his own forced contribution of \$7,500.

Case II.

Value	\$100,000
Insurance	50,000
Loss	80,000

Here the value and insurance are the same as in the previous case, the only difference being that the loss is larger, namely, as it happens, equal to the amount of insurance that he had agreed to carry.

Here as before, as he is a co-insurer for \$30,000, the company's contribution will be $\frac{5}{8}$ and his $\frac{3}{8}$. But $\frac{5}{8}$ of \$80,000 is \$50,000, the full face value of his policy; he, therefore, obtains from the company the full amount of his insurance, the \$30,000, that he must himself contribute, being only the amount by which his insurance falls short of the loss.

Case III.

Value	\$100,000
Insurance	50,000
Loss	90,000

Here as in the two previous cases, the contribution of the company will be $\frac{5}{8}$ and his own contribution $\frac{3}{8}$. But $\frac{5}{8}$ of \$90,000 is \$56,250. This is more than the face of the policy, and as the liability of the company ceases at \$50,000, the policy-holder must stand this loss of \$6,250 in addition to his own contribution as a co-insurer of \$33,750, that is, altogether the \$40,000 by which his loss exceeds his insurance.

The conclusions are these: the co-insurance clause is operative, in effect, only when the loss is less than that percentage of the value that is named in the agreement; on losses above this, for instance total losses, the company is liable for the entire amount of the insurance. An interesting consequence of this may be adverted to. If the co-insurance clause had been in use to any large extent in San Francisco the rates would have been corresponding lower and the amount of insurance carried would have been higher and yet the insured would have received the full amount of their insurance because the losses were all practically total.

The lowering of the rate has been referred to; the effect of the introduction of the co-insurance clause is, of course, so far as the liability of the company is concerned, to fix the ratio of insurance to value, so that it is possible and customary, upon this basis, to make the rate depend upon the percentage as we have seen that in equity is due.

Usually 80 per cent. is taken as the standard, the rate for 90 per cent. and 100 per cent. co-insurance being proportionately lower and the rate for percentages less than 80 being proportionately higher. In some places, as in New York city, the insured is not free to choose what percentage of insurance he will carry; in that case, usually, as in New York city, 80 per cent. or over is prescribed. In practice this is not so arbitrary and harsh as might seem to be the case, first, because most of the insured desire to carry at least 80 per cent. of insurance and, second, because where, as in fire-proof office buildings, the insured might very naturally desire to carry only partial insurance, as a matter of fact full insurance can be given at scarcely any additional cost.

The general conclusions we reach with regard to the coinsurance clause are these: that the principle upon which it is founded,

namely, that rates should be based upon the percentage of insurance carried, is not only sound but is absolutely requisite if the equities of the insured are to be preserved; second, that the coinsurance clause rightly recognizes that as a practical matter the responsibility for maintaining a given percentage of insurance must rest with the insured; third, that the operation of the agreement is automatic and fair.

The objections that can be urged to the coinsurance clause are not on theoretical but on practical grounds and are entirely due to the fact that it is in use where it is not understood. It is perfectly true that the coinsurance clause is a dangerous thing for a person who does not understand it and for a person who does not keep close watch of his values,—not dangerous in the sense that the insured will not get what he ought to get, but in the sense that he will not get what he thinks he is going to get. But, should the government undertake to shield those who enter into a contract which they do not understand if this must be done at the expense of the real equities of the mass of the insured?

The very purpose of the coinsurance clause is to place upon the insured the responsibility for ascertaining the value of his property, and for keeping it properly insured; and it goes without saying that, having assumed this responsibility, he must live up to it or he will be caught at a disadvantage.

All that the insured needs to know, as a practical matter, is that in signing, say, an 80 per cent. coinsurance clause he agrees to keep at least 80 per cent. of the value of his property covered by insurance, and that in failing to do so he makes himself liable to the loss of part of his indemnity.

A number of states have laws prohibiting the use of the coinsurance clause, but among the larger, more intelligent buyers of insurance the demand has been so great for it that in one state, Michigan, a law was passed making it legal if signed by the insured; and in another state, Missouri, the law by common consent of both parties is not observed, that is, the coinsurance clause is used although settlements under it cannot legally be enforced by the companies if the insured cares to resist them.

The enactment of an anti-coinsurance law in a state like New York, where there are so many large values to be protected, and

where the general standard of intelligence on insurance matters is high, would result in serious inequities and would meet with strong opposition from the insured.

The antagonism toward the coinsurance clause is very typical of the public attitude toward insurance in general. The policyholder who, by his own carelessness, has been caught under-insured and hence cannot collect full indemnity loses sight, in the presence of his own personal and immediate grievance, of the fact that he and other policy-holders were getting their insurance at a lower price because of this very agreement whose adverse effect he now feels.

The equities of the mass are lost sight of; in other words, the short view takes the place of the long view. But the very nature of insurance demands that the long view shall prevail, otherwise the whole system breaks down.

EXPENSE.

Out of every dollar that is paid into a fire insurance company on the average 38½ cents is paid out for expense. This seems a very large amount for a business which consists, essentially, simply in the collection and subsequent distribution of money. The following may be taken to be a normal distribution of this:

	Per cent.
Salaries, rent and general administrative expense.....	7.5
Commissions	21.5
Taxes	2.5
Special agents—salaries and expenses.....	3.5
Inspections, local boards, etc.....	1.5
Printing, postage, etc.....	2.
	38.5

The largest single item of expense is the 21.5 per cent. that is paid to agents for commissions. This is a large amount to pay to a middleman. It is necessary to see just what value is received for this, just what the service is which is performed by agents.

AGENTS.

The agent in fire insurance is far more important than is generally recognized. He it is who virtually decides what risks the company shall take, and what it shall refuse, and what shall be the specific, written terms of the policy. While the company exercises the right of review, it is manifestly necessary that it should in the main rely upon the judgment of its agents. The character of a company is therefore very largely determined by the character of its agents. It is in their power to make or ruin a company's business.

The agent is the one who comes in direct personal contact with the insured, the company never. Furthermore business is usually done by the insured with the agent on a purely personal basis rather than because he represents some particular company. The property owner gives his business to an agent whom he knows and in whom he has confidence and in general lets him select the company that he will place it in. The fact that the agent has this personal clientele puts him in the position virtually of controlling a certain amount of business; as a matter of fact and as a matter of law, the business belongs to him rather than to the companies: it has been decided by the courts, for instance, that the expiration books are the property of the agent and cannot be claimed by the company.

It will be easily realized then why the agents have such a dominant influence. It is *they* who control the business; the companies must come to *them* for business, and in general must come to their terms. The companies seek the agents, not agents the companies, except to a degree in large cities.

Fire insurance agents occupy a very curious and anomalous position. Legally and in fact they are agents for the companies and must protect the companies' interests, but at the same time their personal relationship with the insured makes them equally solicitous for his best interests. Add to this the fact that the agent represents not one but several companies and that he is called upon to distribute his favors among them all, and we have a notable example of a man who is serving many masters. That the system works as well as it does is remarkable and particularly when the

equally anomalous condition is noticed that in general agents are paid a commission upon the premium receipts, so that a large volume of business and particularly of hazardous, high-rated business is for the benefit of the agent, irrespective of whether the results are favorable or unfavorable to the company.

The tendency is for companies in their competition for business to appoint agents, not for their real worth, but because of their ability to control business, and this even goes so far as the appointment of persons who are qualified in no other way, persons who, because of their connections or because of the sympathy they command for some misfortune, can turn over certain lines.

When one considers the very responsible position of an agent, not only in binding the company, but in consideration of the fact that it is in his power, if he is ignorant or careless or otherwise wrongly disposed, to write policies for his clients which will not properly protect them, the bad economic effect of the appointment of incapable agents is apparent.

Not only, however, do companies appoint agents who are not properly qualified or who have no qualifications beyond the fact that they can control a certain amount of business, but the tendency is to multiply agencies beyond the point where they serve an economic purpose, and to a point where they exist for purely competitive reasons. In other words this is an instance where competition serves no useful economic end.

COMPETITION.

We may consider competition to mean a state in which sellers are trying to attract buyers and if the competition is open there is no bar to this. The inducements offered may be of various kinds; in the first place the inducement may be a reduced price. This inducement is not made unless the buyers are in a position to understand and take advantage of it. In the recent investigation of life insurance, it was found that competition had not acted to reduce prices, for the reason that the real price was largely dependent upon the dividends paid and this was so technical a matter that it was not understood by the insured. In life insurance competition is turned in other entirely different directions.

In fire insurance, on the contrary, open competition has acted, as we have seen, invariably to a reduction of rates beyond a point that was to the best interests of either insurer or insured. The result has been that either by agreement or otherwise prices in fire insurance have been to a degree standardized and competition in that direction to that extent limited.

COMMISSIONS.

Inducements therefore of some further kind must be made. Now in fire insurance, the business is controlled as we have seen by the agents. The companies, therefore, instead of trying to influence the insured make inducements to the agents. These inducements are of course mainly high commissions. In addition to this, however, the companies, as has been said, try to induce business by appointing more agents than are necessary and agents that are not really competent.

Competition, therefore, in fire insurance has acted badly both as regards rates and expenses, but in different ways. It has driven rates too low and expenses too high. And just as the companies have combined to raise rates to a proper level and to standardize them, so the more conservative companies have combined to lower commissions and to standardize them. The so-called Eastern Union in this territory and the Western Union in the Middle West limit their members to a definite scale of commission. It should be said, however, that certain of the largest cities are not included under the jurisdiction of these bodies; they are called excepted cities.

In the Eastern Union territory the commission paid has been a flat 15 per cent. In the Western Union territory there has been a graded scale of 25 per cent. on preferred risks, 20 per cent. on brick mercantile buildings, and 15 per cent. on other classes. In the excepted cities, the commissions are open; in general they run much higher than in Union territory, in some cases as high as 45 per cent.

The membership in the Unions consists in general of the strongest, most conservative companies. The non-Union companies outnumber the Union companies, but in amount of business done the Union companies are much in the lead.

The non-Union companies are with few exceptions companies that are so weak as to be unable to procure the best business without offering some inducement either to the policy-holder in a reduction of rates (the non-Union companies are largely non-Board companies also) or to the agent in an increased commission. In the case of preferred risks this competition becomes intense and often leads to commissions that are absurd. In fact, competition on "preferred risks" among the non-Union companies has gone so far as to drive them, in Western Union territory, into a "non-Union" union, called a "Bureau," with a scale of commissions somewhat higher than that of the Union companies.

In general the Union companies have been able fairly well to meet the competition of the non-Union companies, the advantage of their greater strength more than offsetting the inducements offered by their competitors, but in the Eastern Union territory the competition has recently become so intense that the Eastern Union has been on the verge of dissolution. It has been saved only by yielding to the pressure of the agents and raising its commissions to a graded scale similar to that of the Western Union; at the same time, however, steps have been taken to reduce commissions in the excepted cities.

The whole subject of commissions is a very perplexing one; it is a matter which is in a continual state of agitation between the companies and the agents; the companies admit that conditions are wrong but they profess to be at a loss to know how to better them and many underwriters go so far as to suggest that it may be necessary for the State to limit commissions in fire insurance as it has limited commissions in life insurance. An impartial observer, however, is moved to ask, since it is granted that most of the trouble about commissions is due to preferred risks, why the companies should not stop hacking at superficial evils and attack the root of the matter by reducing the premium rates on "preferred risks;" to satisfy the public that they are thoroughly in earnest in their undoubted desire to reduce the expense of the business this step must be taken.

It is strongly contended by many underwriters that the high commissions paid on preferred risks are not too high; that the business, which is mostly dwelling-house risks, comes in such

small pieces and is in other ways so difficult to write that it should be paid a higher rate. There is some justice in this, but it does not quiet the matter, for the companies by offering higher commissions on this class are responsible for the situation, not the agents by *demanding* them.

It is possible that in some cases at least, the commissions on preferred business are not too high, but nevertheless they are, in the way that they have come about, a clear indication that the business is rated too high.

The making of the rates equitable on all classes and hence the elimination, so far as that is possible, of the "preferring" of any one class would perhaps not solve the commission problem but it would certainly go some distance in that direction.

The proposal to limit commissions by law should be kept as a last resort. There is an intimate relation between rates and commissions, but of the two the subject of rates is more fundamental. Rates are getting steadily more equitable; furthermore, the fire insurance business is changing now very rapidly; time should be given to see whether the further progress of rate equalization and the rapidly changing conditions and spirit of the business will not bring improvements in the matter of commissions. If this is not accomplished it would certainly be within the proper function of the State to see that this expense is regulated by law.

In this connection the subject of contingent commissions should be spoken of. Theoretically it seems entirely wrong to pay an agent a flat commission upon premiums, because by this system of payment he fails to have his interest identified with the interest of the company and the public in the prevention of fire-loss. He gets his premium whether the risk burns or not, and in fact to a degree an occasional fire helps his business by bringing to peoples' attention the need of insurance. As to the actual workings of the system only this can be said: there are all kinds of agents as there are all kinds of men in general; some are very careless about writing risks, some are very careful. But on the whole agents are not interested in fire-prevention to any such degree as the companies.

This seems radically wrong, for no one touches the problem of fire-prevention so intimately. It has been proposed to force an interest in the agent in fire-prevention by making part of his commis-

sion contingent upon the earnings of the company upon the business which he has written. In fact one large and prosperous company already pays many of its agents upon this basis. Some few objections have been made to this plan, but none that seem important. The plan of paying agents contingent commissions was endorsed by the last Convention of Insurance Commissioners. Your Committee does not recommend legislation upon this subject, but thoroughly commends the principle of contingent commissions and believes that it should be put into general practice by the companies.

The expense problem is unquestionably the most perplexing problem in the business today. It is seen that the tendency of free competition is to drive commissions higher and higher and it is difficult to see what will restrain this tendency except combinations of the companies to regulate commissions. Such organizations then as the Eastern Union should be encouraged.* In addition to the expense that arises from high commissions we have also seen that there is a waste in the business produced by too great a number of agents and particularly by the appointment of agents who are incapable of performing any real economic service.

The companies show no signs of taking any steps to improve this latter condition. The better class of agents, however, through their organizations, are moving in this matter, not so much for the good of the public as for the sake of better conditions in the business itself; it has been freely suggested by agents that the State should undertake to protect the public from incompetency in this field. Certainly if the State finds it desirable to go so far as to set up a standard for veterinary surgeons and for plumbers it is reasonable that it should set up a standard for the agent who, by carelessness or incompetence, can invalidate his client's insurance or plunge the companies into severe losses. It would seem desirable that an examination for competency should be provided by statute or that the Superintendent of Insurance should be empowered to fix standards of competency and license only those who are able to comply therewith; furthermore, that a fee should be charged. This would help to reduce the number of unnecessary

* Curious to say, however, in some states companies are denied the right to combine even on the subject of commissions.

agents, particularly if the fee were large. It is doubtful, however, whether as a practical matter, the State could go very far in this direction without bringing into operation the retaliatory laws of other states to the disadvantage of domestic companies.

EXPENSE AND FIRE-PREVENTION.

One other aspect of the expense problem must be spoken of. Attention has already been called to the fact that the tendency in insurance is now very strongly toward "prevention." In one field, steam boiler insurance, this has gone so far that the preventive work of the companies has become far more important than insurance proper. It is so obvious that the blowing up of boilers should be prevented rather than that they should be allowed to blow up and the losses distributed that as a matter of fact over 80 per cent. of the premiums are used for inspection and other preventive work.

It ought to be almost equally obvious that fires and deaths should be prevented; we are accustomed, however, to think of them both as inevitable; death is inevitable, to be sure, but not *untimely* death; we are coming more and more to know that fire and disease should both be eradicated.

Now in the face of this tendency the question of expense, serious as it is now, is a still more serious one to meddle with. For it is really true that the destiny of insurance is to become prevention, as steam boiler insurance has become, the expense ratio must increase instead of diminish, namely by all the expense of inspections and other preventive work. Arbitrarily then to limit expense would be a very dangerous step for it might discourage this very development.

BROKERS.

The fire insurance business is characterized by its great variety of local conditions; the same company often does business very differently in different states and even in different parts of the same state. It is impossible for instance to treat the broker in fire insurance in a general way; in one part of the country he is looked upon as an unmixed evil and in another part he has made for himself a thoroughly honorable and useful place.

It is evident that there must be middlemen between the company and the insured. In the country and small city these are the local agents; in some of the larger cities also the business is entirely in the hands of the agents and their paid solicitors, but in most of the large cities there has grown up, to a greater or less extent, a class of "brokers" who bring the business of their clients to the companies. The agent and the broker are largely complementary, that is the presence of one to a degree usually means the absence of the other. In New York city for instance business is done almost wholly through brokers and there are but few local agents.

It is impossible in large cities for the insured to come into direct contact with the company; whether the middleman is the agent (and his paid solicitors) or the broker is, in an economic sense, largely a matter of indifference, provided both are efficient—that the work of each is real service.

Fundamentally the broker is one who can control a line of insurance; he virtually sells it to the company; his pay is in the form of a commission. If this were the whole of the service that the broker performed (and in some cases it is hardly more than this) his existence would hardly be justified; at best the only economic service that he performed would be the covering of some property with insurance which would otherwise be allowed to go unprotected.

The broker has however in general developed to a point several steps in advance of this. Competition for business has forced him to find ways to make himself useful. That broker will get the most business who can give the most value in return.

Now, in a large city where the insurable values are large, where the conditions are complex, where the rating is done by schedule, where enough good insurance is difficult to find, it is not hard for the broker to find valuable services that he can acceptably perform. They are much the same services which, in the absence of brokers, would be performed by agents. He becomes the expert adviser of the insured, he inspects his property, he studies his schedule, he finds what changes can be made to reduce his rate, he plans these changes in detail, or if the building is still in the hands of the architect, he joins with the architect in a study to make it a superior risk, he decides the written part of the policy and the appro-

priate forms, he picks out the companies to whom the risk is to be given, he gives legal advice, he attends to adjustments of losses — all of these services and perhaps others are performed by the brokers who have the most successfully found their place.

In all of this the broker is acting as agent for the insured (although he is paid by the companies). It can hardly be denied that one who has found as much work as this to do has justified his existence. And there is perhaps a certain advantage in his representing the policyholder instead of the company for it is beyond question that the man who has large insurable interests needs this expert advice.

But to perform these services requires the employment of a large office force and a number of experts, and so, either as cause or effect, it has happened that in general it is the larger offices that can offer the most capable service. The brokerage "evil" has to do not with this class but rather with those who are hardly more than solicitors. There are about 7,500 brokers that are certificated by the New York Fire Insurance Exchange; of these probably 75 per cent. do most of the business. Do the remaining 7,000 perform any really important service for the public? If not, has the majority of them not better be eliminated?

It is not true, to be sure, that the support of these falls entirely upon the insurance business, for most of them combine their insurance with real estate or something else. It is not an easy question to dispose of. Even granted that a number of members of a community are out of place economically, it is quite another question to know the wisdom of whether and how to try to put them right. Even if these brokers were eliminated as brokers would they not turn up as paid solicitors in the offices and things go on in much the same way?

However, what has been said about the qualifications of agents applies almost as strongly to brokers. This Committee believes that it is desirable that the State should fix a standard of competence both for agents and brokers; furthermore, that a broker should be required to pay a license fee to the State.

Brokers occupy a somewhat anomalous position in that they are agents of the insured and yet are licensed and paid by the companies. Trouble has often arisen from this fact. The policyholder has found himself unprotected because of failure of his

broker to turn over his premiums to the company; furthermore, it is often impossible in the case of cancellations for the companies to obtain return commissions from the broker. To correct this there have been several proposals; one way to handle this matter would be to require a bond from the broker, another way would be to make the broker, as a matter of law, the agent of the company.

At first glance the idea of requiring a bond of the brokers for the faithful performance of their duties recommends itself, but on a closer examination the question arises, why single out one form of occupation and require it to be subjected to restrictions of this nature when the State does not require anything of the kind in other professions where a license is necessary and where the fiduciary element is present to a still greater degree.

For example the State licenses attorneys-at-law, and it is a matter of common knowledge that these men are called upon to handle their clients' or principals' money in large amounts. No undertaking is required of them that they will be honest before the authority is granted them to practice their profession. Such matters are left to be taken care of by the penal statutes, and the committee believe that this is as it should be. If provision is made to license the broker and one of the conditions for the granting of the license is that he must be trustworthy and if it is made easy for such license to be revoked upon its appearing that he has ceased to be such, and if his conviction is made possible for any form of dishonesty or on proof that he has violated the insurance law, or even on proof that he is guilty of such sharp practices as to make him untrustworthy, it would seem that the object sought in the suggested bond requirement had been amply attained.

The committee has endeavored to cover this very point in a statute which will be submitted and to cover it in such a way as to eliminate the dishonest broker without doing violence to the principles of good public policy.

The principle that your committee has acted upon in its conclusions is that the State should go no further in the regulation of insurance companies than actual conditions seem to demand. Free competition should be considered to be the normal basis, in general, for business activity. If however it should be demonstrated that this condition is leading to grave abuses it would be

the function and duty of the State to interfere; it is an open question for instance whether the State will not find it necessary ~~some time~~ to regulate commissions.

When however the companies leave the condition of open competition and form combinations it is recognized that the State may rightly take steps to guarantee to the public that this power that the companies so gain shall not be abused. The exact attitude of the Committee on this point has been fully expressed elsewhere in this report.

In its recommendations however, your Committee goes a step further than to provide merely for *publicity*; it is prepared to recommend that combinations of companies should not be allowed to exercise a control over brokers. The correctness of this principal is open to argument. The Committee, however, feels very strongly that the pledges that are now required by rating organizations of brokers give to such combinations of companies powers which, if they are to be exercised at all, should belong to the State. Such pledges now give to the Exchange a life and death power over the broker and furthermore make him an important instrument in carrying out the purposes of the combination. It may be granted that in general these purposes are good and yet it is offensive to one's sense of liberty that this power should be in the control of a combination to be exercised not upon the agents of the companies but upon the agents of the insured.

It is believed that the good of the business demands combination but this combination must not be maintained by a control over non-participating outside element. Whatever powers are necessary to secure the proper activity of the broker should be assumed by the State. It might be well, however, that in the exercise of this power the Exchanges should be called upon in an advisory capacity.

REBATES.

Commissions to brokers are paid out of the premiums by the companies. If it is granted that brokers are performing valuable expert service for the insured it would seem natural and desirable that they should be paid by the insured for the service performed just as lawyers are paid; of course, it is in the end the insured that pays the broker even if as now he pays him indirectly through his insurance premiums. It is doubtful, how

ever, whether the payment of the broker directly by the insured could be made to work. Theoretically it would be much better for it would stop rebating. In that case every man would pay the same price for his insurance (he should, of course, get it for the regular price less the regular commission to brokers), but he would make his own bargain with his broker. At present the insured are all on the same terms both as regards the cost of their insurance proper and that part of the premium that goes to the broker. The practical consequence of this method of payment is that some brokers buy their business by giving rebates.

That one man should be able to get the service of his broker more cheaply than another (which is what a rebate amounts to) is not wrong; it is purely a competitive condition that in a majority of cases would be founded on reason, but that it should be accomplished by the passing of a rebate is what is reprehensible. In the one case the bargain with the broker is open and straightforward, in the other case it is indirect and underground.

As a practical matter rebating in any form works badly. It is a form of discrimination in which a straightforward man is at a disadvantage. Practically all of the underwriters' organizations attempt to prevent rebating; the New York Fire Insurance Exchange for instance requires from every broker a pledge not to rebate, the penalty being the revoking of his license. If such a pledge as this is broken, and assertions are freely made that this is not uncommon in New York, the discrimination is all the more marked, for now it is not merely the straightforward against the underhanded, but the honorable against the dishonorable.

If rebating is a really serious evil and if the payment of brokers by the insured is impracticable, the matter should be assumed by the State and an anti-rebate law should be passed to govern both agents and brokers. While this would not absolutely cure rebating it would go further than the underwriters themselves can go in the matter.

LIMITATION OF CONFLAGRATION LIABILITY.

Since free competition in fire insurance has been shown to have produced bad effects both in driving rates too low and in driving commissions too high, the question arises whether competition produces beneficial results of any kind. There is another inducement

ment beside that of price that can be offered to the policy holder and that is the quality of the insurance. The actual form of policy is standardized; this on the whole is undoubtedly a good thing particularly considering the importance of concurrency, but, in passing, attention may be called to the fact that thereby the opportunity is lost for the companies to improve the contract by competition with each other. Competition here then as well as on rate and commissions is limited.

There remains, however, one direction still open; the companies can compete in strength. The State to be sure here prescribes a legal minimum of strength and companies that are able to come up to this standard are called "authorized" companies. But among authorized companies there is a vast difference, and while it is not the function of the State to call attention to this, it should afford the policy holder every opportunity to find it out for himself. This the State can do by requiring the companies to make public all important facts. It should be plainly understood by the public that a "authorized" company has not, because it is authorized, been stamped with the State's approval beyond the point of having complied with certain minimum requirements.

In reality in fire insurance the conditions that are required by the State regarding capital, surplus and reserve are far from securing the stability that similar conditions secure for life insurance companies; this is because of the conflagration hazard. It is possible for a company to write so recklessly in a single city or even in a single conflagration district as to make its indemnity in case of conflagration worth almost nothing. A comparison of the total assets of a company and its total risks is not very significant. Far more important is a comparison of its assets with the amount it has at risk at points that are subject to conflagration.

Theoretically it is within the province of the State to exercise some control over this matter. A certain part of the premiums are for the conflagration hazard and should be held as a reserve therefor; since conflagrations come too infrequently, however, to afford an average the size of this reserve should be determined by reference to the company's liability in conflagration districts. The so-called surplus of a company is in reality conflagration reserve and the plan that has just been referred to would recognize this as

liability; that is, it would require this conflagration reserve or surplus to be commensurate with the amount at risk in a conflagration district instead of, as at present, leaving the matter entirely open; or, looked at from another point of view, it would limit the writings of a company in a conflagration district, so as to make them bear some given relation to the surplus.

The objections to this are wholly on the grounds of practicality. It has been recognized that the conflagration hazard has no proper place in insurance, that there is no machinery in the system that will properly take care of it, and, accordingly, it is too much to expect that the ordinary principles regarding reserves can be strictly adhered to. In practice there are at least two serious difficulties; first, the inability of companies, immediately after a serious conflagration, to hold the proper conflagration reserves, and, second, the fact that a restriction upon the amount that a company could write in a conflagration district would almost certainly result in a shortage of insurance.

The actual facts at present are that companies treat this matter in the most widely different ways. Some companies write so carefully that they are within their ability to pay in full in even the most serious conflagration, while other companies write so recklessly that in a similar case they could not pay ten cents on the dollar.

The difference partly reflects the different points of view of underwriters with regard to the likelihood of conflagrations, but it is also true that at one extreme are found very largely the large, well established, conservative companies whose theory of underwriting contemplates a long, continuous existence and, at the other extreme, small, unsubstantial companies which are admittedly only gambling on the chance of being completely ruined. Such companies in a serious conflagration expect to go under or at any rate to be able to settle their claims at a fraction of their face value.

That is, a good deal of the insurance that is bought in large cities has practically no value as conflagration indemnity. And yet in the case of ordinary fires it gives fairly good protection.

The actual state of affairs in a city like New York is that there is not enough first-class insurance to meet the demand and

policy-holders must take a certain amount of inferior insurance, which will be almost valueless in a conflagration, for the sake of the protection that it will give in ordinary fires.

In the face then of this very serious conflagration hazard, and since it is probably impracticable to attempt to bring the companies to a uniform standard of potential solvency, it is unquestionably desirable that the State should be able to place before the policy-holder the facts upon which he can intelligently make his choice of companies.

For this purpose it is necessary and sufficient for the State to require from each company a statement of its amount at risk, both gross and net, in the conflagration districts of say the twenty largest cities in this country, such conflagration districts to be designated by the Superintendent after an examination from time to time of the conditions in each city.

THE SAFETY FUND LAW.

Shortly after the great Chicago fire a law was passed in this state, and similar laws in several other states, which was designed to meet the situation arising after a great conflagration. The insurance condition after a serious conflagration is very critical; most of the surplus of even the strongest companies has disappeared, other companies are insolvent or impaired and the possible indemnity in case of another serious fire is at a very low point. In a consideration of conflagrations it is quite as important to think of the subsequent impairment of future indemnity and its effect upon credit, as of the claims of the policy-holders who have suffered loss.

It was with this in mind that the so-called "safety-fund" law was passed which in brief allows a company of this state to set aside a fund called a Special Reserve Fund, provided at least as much more is set aside for general surplus; in case of a conflagration in which the claims upon the company exceed the amount of the capital and general surplus, the company is allowed to hold this special reserve fund, together with the unearned premium reserve, free from the claims of the burned policy-holders, for the benefit of the unburned policy-holders. The capital and genera

surplus go to the policy-holders who have suffered loss; they get this and this only, and have no further recourse to the company.

The purpose of the law is excellent, namely, to save the company's plant, and so to encourage the supply of indemnity in the very critical situation that follows a conflagration. To plunge a company into insolvency and so destroy its plant is an economic loss. The withdrawal of part of the surplus in a special reserve fund cannot be criticised in view of the fact that the size of the surplus is a matter that, in any case, is at the discretion of the company.

The effect of the law, however, is to turn over the whole of the unearned premium reserve to the unburned policy-holders and so in effect to make them preferred creditors. The unearned premium reserve is to be sure the part of the funds of the company that is reserved for the unburned policy-holder's special benefit, and, strictly, the surplus is that part of the funds that is applicable to conflagration liability, and yet there is considerable to be said, in case somebody must lose money, for the greater urgency of the claims of the burned policy-holders; for, whatever the claims of equity may be, the moral claims of the burned policy-holders are the stronger because of their greater needs.

A law has been recently passed in Massachusetts which in effect denies to the unburned policy-holder the position of preferred creditor.

The whole question is simply another outcropping of the fact that the conflagration hazard does not properly belong in insurance and cannot be dealt with wholly rationally. It is inevitable that a conflagration, even with all the resources of the insurance companies, should produce serious financial disturbance.

The safety-fund law is another instance of the numerous features of insurance which must be understood if the policy-holder is to be in a position to act intelligently. In effect what must be borne in mind is that the effective strength of a safety-fund company in a severe conflagration is its capital and surplus less its special reserve.

There is this to be said, however, that as a practical matter the safety-fund law would not be taken advantage of except in a very severe conflagration. It would be only when the companies that

were not operating under this law were very seriously involved that the safety-fund companies could afford, for competitive reasons, to take advantage of it. Only one company took advantage of the law in its San Francisco settlements.

THE REGULATION OF RATES BY COMPETITION.

So far only one open avenue for competition in fire insurance has been noticed. Competition in rates and commissions has been closed by combination, competition in policy forms has been closed by the standardization of policies. There is only a competition in strength and it is seen that, to open the way fully to the operation of this form of competition, steps must be taken to let the policy-holder see clearly what the strength of the company is.

It has been urged, however, in this report, that competition, with the help of publicity, was sufficient to keep rates reasonable. If this is so competition must still have some power. It is true to be sure that perfectly free competition in rates has been largely closed, and it is believed that this is unquestionably for the public good, but competition can and does regulate rates through the medium of the rating organizations.

If a rate is too high there is pressure brought by the companies upon the rating organization to reduce the rate as a basis for securing business, that is, there is a competition among the companies to obtain the favor of the insured by securing for him a reduction in rate. Furthermore, there is the competition of mutual and non-Board companies and the threatened competition of other companies that will be organized if the rate becomes too high.

MUTUAL INSURANCE.

It is believed that there is enough competition here to keep rates from becoming excessive, but it is important that this beneficial and regulative form of competition should be retained and increased if possible. This can be done, for instance, by opening the way to a free competition by the factory mutuals and the miscellaneous mutuals which have in Massachusetts so well justified their existence. Such companies can unquestionably, if they receive proper supervision, exert a very wholesome influence in the

direction of economy and the prevention of fire. There is neither the tendency on the one hand to reduce rates below cost nor, on the others, to pay excessive commissions—the mill mutuals in fact pay no commissions.

There are dangers in the mutual system if the organization and operation of such companies are not closely watched, but it is believed that this can be provided for.

An objection to mutual companies that is often made, and made in such a way as to exalt the stock companies, is that mutual companies cannot assume their share of the conflagration hazard, and that, therefore, this burden and the burden of other classes which the mutuals will not write, is left upon the shoulders of the stock companies.

It is perfectly true that mutual companies cannot in general handle the conflagration hazard but it is forcing the matter into the field of sentiment to find anything in the situation that is either to the discredit of the mutual companies, or to the credit of the stock companies. It is simply a statement of fact that the mutual system can operate successfully only where there is no conflagration hazard, and that if the conflagration hazard is to be assumed at all that the stock companies must do it. But this works itself out in a purely economic way. It is not to the credit of the stock companies to assume a conflagration hazard that is beyond their power and that they are not adequately paid for; and if they do so it is not due to sentiment, but because they yield to business pressure. If there is a field that mutual companies can occupy more acceptably than stock companies, even though by doing so they take the cream of the business, they should be allowed to occupy it. It is not necessary to offer a subsidy to the stock companies for undertaking the conflagration hazard; if it is underpaid let them collect more premiums:

FACTORY MUTUAL INSURANCE.

The first so-called Factory Mutual Insurance Company was formed in 1835 in Rhode Island and grew out of the fact that the stock companies at that time made no concession in rate for fire-protective features. The members were mostly owners of woolen

and cotton mills. Since that time twenty or more such companies have been organized, mostly in Massachusetts, Rhode Island and Pennsylvania. They have risks aggregating something over two billion dollars. These companies co-operate with each other in the distribution of risks and on inspections; they are grouped, largely according to size, into what are called the Senior Conference and the Junior Conference. These companies which began by writing mostly woolen and cotton mills have broadened their field to factories in general.

From the very first they have been able to make better* rates to their members than the stock companies, for they have always interested themselves in protection and prevention. In 1875 the automatic sprinkler was invented. This was unquestionably the greatest step that has ever been made in the subject of fire prevention. The automatic sprinkler consists in a sprinkler-head suspended from the ceiling and connected under pressure with a source of water; the opening in the head is sealed with a soft solder that melts at a comparatively low temperature. These sprinklers are scattered at regular or irregular intervals throughout the building which is to be protected. When a fire starts the heat melts the solder on one or more of the sprinklers in the immediate vicinity of the fire, the water is released and is thus automatically applied at the point where it is most needed. The result is that in a very large proportion of cases the fire is extinguished, often in the absence of any person, before it has done much damage. The great value of the sprinkler lies in the fact that it is automatic, ever-ready and applies the water at the exact spot where it is most needed.

The sprinkler soon after its invention was investigated by Mr. Edward Atkinson, who at that time, as president of the Boston Manufacturers' Mutual Fire Insurance Company, and until his death was the most untiring advocate of fire prevention. The introduction of the sprinkler was slow, owing to the fact that it was largely untried, that the cost of installation was large and that its use was discouraged by the stock companies. It was not long,

* The stock companies now, through the **Factory Insurance Association** practically meet the rates of the mutual companies.

however, before the sprinkler demonstrated its value, and to-day a sprinkler equipment is in general required before a factory mutual company will go on a risk. The work of the factory mutuals consists very largely in standardization and inspection, the emphasis being on the *prevention* of loss rather than on insurance proper. The first step that is taken by a mutual company on receiving an application for insurance is to make a thorough survey of the property and to draw up a detailed plan for changes in construction, the installation of a sprinkler equipment or a pumping station or such other features as may be thought necessary by the company before they will accept a risk. When the risk is accepted the insurance is apportioned among the different companies largely in proportion to their size.

The companies unite in a very thorough inspection work. Every factory is carefully examined by experts at least four times a year and the results, with suggestions for improvement, are sent both to the companies and to the owner. If the inspections show continued poor conditions, the insurance is cancelled. The results of this system are little short of marvelous. Factories are, of course, in themselves one of the most hazardous classes. The rate of the stock companies on woolen mills, when the first factory mutual company was organized, was between one and two dollars a hundred. The net rate now in the best mutual companies is about four cents.

It is impossible to go further into the details of this most interesting work. But it should be clearly recognized that to the mill mutuals belongs most of the credit for the inception of what is being done to-day toward the prevention of fire. The stock companies are now thoroughly committed to this work themselves, but they have been largely driven into it by the competition and example of the factory mutuals.

The premium plan of these companies is as follows: risks are graded by percentages, that is, the rate is seventy cents, eighty cents or some other multiple of five; as a matter of fact, the standardization is so complete that there are no great differences in rate. The average rate in the larger companies is about seventy-five cents; this premium is paid at the beginning of the year; at the

end of the year the part of the premium that has not been used is returned. This return premium is based upon the experience of the company on the whole of its business. For some years it has remained very steadily near 94 per cent.

Beside this gross premium, only 6 per cent. of which is in general necessary, the policy-holders bind themselves to pay an assessment, if necessary, of five times the gross premiums. No company in the last sixty years has found it necessary to call for an assessment. This in itself is very good evidence of the strength of the factory mutual system.

In a statistical analysis the ratio of assets to amount at risk comes out somewhat smaller for the largest mutual companies than for the largest stock companies, not including, however, in the assets of the mutual companies the potential strength of the assessment; but the risks of the stock companies are so much more hazardous than those of the mutual companies that the ratio of assets to losses is thirteen times as great for the mutual companies as for the stock companies. Considering in addition the fact that the factory mutual companies do not write where there is a serious conflagration hazard, it would seem as though they were abundantly strong.

It has already been said that the competition of the factory mutuals has been largely met by the stock companies through the medium of the Factory Insurance Association. Stock insurance appeals more strongly to some owners of factories, particularly those who wish to be entirely relieved of the possibility of assessment and those who would be embarrassed by maintaining so large a deposit. The stock companies offer on such risks the same rate as the net rate of the mutual companies when the interest is taken into account on the amount on deposit; for example:

Gross mutual rate	\$0 75
Return premium (94 per cent.)	.705
Net rate	.045
Add 4 per cent. interest on the gross premium on deposit	.03
Effective mutual rate	.075

The expense of doing the business of factory mutual insurance is much less than the cost of doing the business in stock insurance. Stock insurance costs about forty cents per \$100 of insurance written, and factory mutual insurance about four cents* per \$100 of insurance written.

The expense ratio for factory mutual insurance is, however, greater, when figured on the net premium than for stock companies; more money is spent on expense than on losses. This is natural and right; it shows only the emphasis that is being put upon the protective side of the business.

These companies are not admitted to do business in this state, but the fact is that they issue policies covering property located therein in enormous amounts in the aggregate. This they do by writing the policies and issuing them at their home offices in their home states and mailing them to the policy-holder whose property is insured. In this way they avoid sections 49 and 50 of the Insurance Law by making the contract in the foreign jurisdiction where the New York statute does not and cannot apply.

It is quite apparent, however, that as the term "agent" is defined in section 49 of the law that the inspectors and surveyors of such companies violate the law, because when they, in the course of their duties, inspect or survey a plant before the insurance is written, or after it is written, with the purpose of informing the company, of the character and condition of the risk, they fall within the definition as a "surveyor or any other person who shall in any manner *aid* in transacting the insurance business," in which the company is engaged. Officers of the stock companies also freely assert that the competition between themselves and these factory mutuals is severe as the good risks of the kind which the mutuals will take are actively and persistently solicited. Nor do the officers of the mutuals strenuously deny the allegation.

The reason for the situation is easily discerned for it is apparent that the law could be rigidly enforced only by keeping a large force of detectives at work to shadow the inspectors and surveyors. As the insurance furnished is of the best and as the

* It is only fair to say however that the Factory Insurance Association has reduced its expense to about the same figure.

factory-owners in the state want the insurance, there is no public sentiment in favor of the enforcement of the law and so it remains practically a dead letter. One result of this is that the state is losing revenue, for the reason that when insurance is placed with these companies, the stock companies which pay taxes to the state lose the business; the state moreover is losing the wholesome effect of legalized competition.

Officers of the factory mutuals have testified before the Committee in behalf of the companies they represent and in behalf of the other mutuals that if it were not for the inconvenience which the present law would subject them to they would apply to the Superintendent of Insurance for a certificate of authority.

Objection is made to the present requirement of the law as to a deposit in the home state of at least \$200,000, on the ground that since the companies are mutual, such a tying-up of funds is opposed to the theory of insurance upon which they are working. Further that the provisions of the present law requiring the premiums by fire districts are onerous.

The Committee believes that every reasonable effort should be made to induce these companies to enter the state of New York, as duly authorized companies and that therefore the law should be so amended as to attract them to come here and pay to this state the taxes they now pay to their home states on the business done here. Furthermore, it is believed that the state itself is more in need of additional revenue at the present time than the Volunteer Fire Departments, so that the tax should not be given wholly to such organizations as the present law provides. The fact is that the risks incurred by these companies are the least likely to burn because of the precautionary measures which are taken to protect them, so that the work of the fire departments is not increased by the presence of such risks. It seems to the Committee that a fair way to dispose of this question and to do equity to the volunteer firemen is to provide that 10 per cent. shall go to the Firemen's Home at Hudson, and that the balance shall go directly into the state treasury. As it is now neither the firemen nor their home at Hudson nor the state receives any tax. It is much better for the state and Home to get it than to have it go to foreign states.

THE MISCELLANEOUS MUTUALS.

Beside the mill mutuals there is a class of companies which do a miscellaneous, but largely dwelling-house business. These are often called the miscellaneous mutuals. New England and particularly Massachusetts has been the part of the country which has taken most kindly to this form of insurance, and here many such companies have had a long and honorable life. In general these companies collect a premium from one to one and a half times as large as the premium of the stock companies on the same class of business, but at the expiration of the policy they return part of the premium; this brings the price of the mutual insurance down in general to about 75 per cent. of the stock premium. The policyholders under this contract are liable for an extra assessment equal to the full premium already subscribed.

These companies write conservatively in large cities. A number of the companies were involved in the Boston fire in 1871 and went through the experience much more creditably than the local stock companies.

The expense ratio of the miscellaneous companies is in general about 5 per cent. less than that of the stock companies.

A number of these companies desire to broaden their field of operation so that they may obtain a larger basis of average in case of conflagration. Under proper restrictions, they should be encouraged to enter.

LLOYDS.

The Lloyds are associations of individual underwriters. The name covers organizations of all degrees of looseness or closeness of association and all degrees of responsibility. The experience with organizations which went under the name of Lloyds in this state has been so unfortunate that in 1892 a law was passed prohibiting the formation of new associations and in 1910 the Lloyds were brought more closely under the control of the Insurance Department. The Lloyds which are authorized in this state transact business in much the same way as the stock companies.

There are besides these, however, a number of foreign Lloyds. These are not allowed to employ agents in this state to solicit business. It is stated, however, that much business finds its way abroad and that the foreign Lloyds write much insurance

in this market and much bitter complaint has been made to your Committee because of this fact.

It is very difficult to see just how the State can prevent its citizens, if they will, from making a contract in a foreign state or land concerning their property wherever it may be. The government that gives mercantile and other organizations their life might compel them to buy insurance only in this state; the wisdom of even that limitation could be questioned, but it is quite certain that the State cannot — and observe the Constitution, — prevent its citizens from making contracts where they will — and of course, the procuring of insurance is the making of a contract.

The Insurance Law now prohibits these foreign Lloyds from writing business in this state; it also prohibits any unauthorized corporation from so doing.

The law now makes provisions for the procuring of surplus line insurance when the same cannot be placed with the authorized companies. An agent is licensed especially to procure this insurance as the agent of the insured. He can place this where he will, provided he and the insured make affidavit that it could not be procured with authorized companies. The statement is made that a good deal of insurance, not surplus line, goes to foreign companies and Lloyds. The remedy for present evils is to enforce the laws already on the books. The Committee fails to see how more law on the subject can help the situation.

There seems to be confusion as to whether the licensed agent can issue or countersign policies for the unauthorized company in these pure surplus line cases. It is claimed that companies are actually and in violation of law issuing such insurance from offices located in New York state. The apparent intent of the law is to permit the issuance of surplus line policies in this state in the special cases mentioned.

The Committee believes the matter should be made perfectly clear by an amendment to the licensed agents' section, so that this surplus line insurance could be written by such agents in this state. Then it may be easier to enforce the other prohibitory sections of the law, as no one not licensed could have even the shadow of an excuse for writing *any* kind of insurance without an express certificate of authority.

INTER-INSURANCE ASSOCIATIONS.

A plan of insurance which in many respects resembles that of the mill mutuals, and in some particulars that of the Lloyds, is furnished by what are called inter-insurance associations or simply inter-insurers.

These are groups of individuals who act to insure each other, that is, they act both as insurer and insured. There are now recognized in this state three of such organizations but there are many more in the country at large. The class of property for which the system was originated and in which the insurance is mainly done is the class of mercantile buildings and stocks.

It is very difficult to procure enough insurance in large cities on the class of mercantile stocks. This led to the banding together of a few merchants to insure each other; the association grew until it embraced several hundred merchants in a large number of cities. Each member of the group who wishes to have his own risk insured must bind himself as an insurer up to a certain fixed limit. Each subscriber is put upon each risk that is written after he enters the association and he is debited and credited with his earnings and losses on each risk. The stock premiums are charged and the earnings amount to a return of a part of the premium. The return is very properly not exactly proportional to the premiums as it is in the case of the mill mutuals.

In general, inter-insurance associations confine themselves to high-grade, well-equipped, sprinklered risks and maintain an inspection department of much the same character as the mill mutuals. This form of insurance is certainly very successful under ordinary conditions but there is some question how successfully such associations could stand the strain of a severe conflagration.

The door is at present shut to those who would organize more of these associations as well as to responsible foreign associations of this character that wish to do business here. Your Committee believes that under proper restrictions, there is no reason why persons who desire to enter the insurance business, either as members of Lloyds, or as inter-insurers, associated with others, similarly obligated, should not be permitted to do so. Further, the evidence shows that there are individuals so associated in

business, domiciled in other states, whose strength is unquestioned and who have accumulated not only an unearned premium reserve upon business done by them elsewhere, but have a guarantee fund deposited in addition to the individual liability of each of the underwriters; your Committee believes that such responsible bodies should be permitted to do business in this state under proper restrictions and that their presence here would aid the general public in securing safe insurance at proper rates.

DOMESTIC MUTUALS.

Mutual companies may be organized in this state under the present law, which, however, has not to any considerable extent been taken advantage of; nor has your Committee's attention been called to any extended demand for a revision of this law. The only evidence on this subject before your Committee was from a witness who advocated a change in the law which seemed more in the interest of promoters of companies than for the good of the public.

The state has already provided in article 9 of the Insurance Law an excellent system of mutual insurance for the smaller towns and communities where the conflagration hazard is substantially absent. These county and town co-operative companies have just recently (1910) been brought within the purview of the Insurance Department and their powers and duties have been carefully defined, and it is to be expected that under careful supervision the usefulness of these organizations will increase.

What seemed a hardship on one of these companies whose record is excellent was brought to the attention of the Committee. The operation of the new statute will have the effect of making it reduce its insurance in a line (mercantile and country hotel risks) where its experience has been very favorable. A recommendation for amendment to the law was suggested by this company so that the insurance issued by it and others in a similar situation prior to 1910 could be continued. Inasmuch as it issued no policy in excess of \$4,000, even in the line prohibited, the Committee believes the exception can safely be made and not impair the efficiency of the law or endanger the class of companies to which it belongs.

FIRE PREVENTION.

Important as it is to have equitable rates in fire insurance and important as it is that the expense of the business should be kept within reasonable limits, so far as practical results are concerned, the problem of fire-waste is immensely more important. On the whole, rates in fire insurance are fairly equitable, probably more so than railroad rates, for instance, and the tendency is strongly toward still greater equity. So far as expense is concerned it is impossible to be very hopeful of much reduction; no one believes that it could be more than a few million dollars a year. Against that we have the certainty that the fire-loss could be at least cut in two, that there could not only be a saving of \$100,000,000 a year in property now destroyed, but nearly as much more in insurance expense, certainly hundreds, perhaps thousands of lives saved and a world of worry and suffering.

The fire-loss of this country averages nearly two hundred and fifty millions a year and is increasing; this is about \$30,000 an hour or \$500 a minute, year in and year out. To this must be added at least the same additional amount for the maintenance of fire departments and nearly as much more for the expense of conducting the insurance business; altogether in the neighborhood of \$750,000,000 a year of expenditure because of destructive fires. That is, fire costs us directly and indirectly each year more than the value of the cotton crop, and not only that but along with this economic loss goes a frightful and horrible loss of life.

All this would not be so bad if it were not so preventable. In Europe the per capita loss is only one-seventh of what it is in this country and in some parts of Europe far less than that. It is stated that in the city of Vienna a fire has never been known to get beyond the building in which it originated, and this is in spite of the fact that the fire departments of European cities are far less efficient than those of this country.

The cause for this is partly climatic; not only do our hot summers make everything as dry as tinder, but our cold winters necessitate artificial heat, and heating apparatus alone is responsible for a large proportion of all fires. A still more fundamental cause for this difference lies, however, in the temperament of the American people and the conditions of life in this country.

This is a new and largely undeveloped country, and the resources have seemed illimitable. In our eagerness to reach results we have not had the patience to build carefully; so plentiful was lumber that it was easier to build and burn and build again than to build substantially at first. Besides that conditions have changed so rapidly that often in a few years buildings must needs be torn down that their places may be taken by others more suitable to changed conditions. Then, explain it as you will, the intensity of life is far greater in this country than in Europe, more living is crowded into the same time. But you cannot accelerate processes without increasing hazard; we have no time to see that matches are out, everything is run under forced draught. The fire loss is only one indication of the wastefulness of our life; we have wasted our forests, our soil, our mines, our water.

There are various indications, however, that we are coming to the time when we must stop this prodigal waste. The drain upon our resources is beginning to show itself in the increased cost of living.

It is impossible to spend directly and indirectly on the luxury of fires each year the amount of \$750,000,000 and not have to give up other luxuries; it is impossible to employ 500,000 men, representing a population equal to that of Chicago, in building, in insurance, in fire departments, who might otherwise be creating wealth, and not feel the strain of their support.

The movement for conservation is becoming stronger every day and will continue to do so as the need increases and the people realize more thoroughly the enormity of what they are doing. In the case of fire the matter is so perfectly possible of control! Even with our present poor construction the fire-waste could be enormously reduced by such simple means as the clearing up of rubbish, the use of safety matches, reasonable care with heating apparatus, the proper disposition of ashes.

It is too much to expect a whole people suddenly to amend its life and pay attention to these things, but the cost of an inspection service which would compel some of these simple precautions would be trifling compared with the good it would do; it has been suggested that the employees of the fire department could be utilized in such work and so become still more familiar with local conditions.

But when we turn now to larger matters, better construction and equipment, we are met by the astonishing fact that the cost of such changes bears no comparison with the saving that would be effected. The equipment that the factory mutuals demand is most elaborate — often a private pumping station, large private water mains, water tanks, fire-stops, sprinkler equipment, automatic alarms — and yet it is the common experience that the cost of all these will be made up in two or three years' savings in premiums. An investment that would be replaced by three years' premiums has an earning power of 50 per cent. per year. Even if it took five years' savings on premiums to pay for increased cost of construction and equipment, such investment would be yielding 25 per cent. and similarly an expense that took ten years to replace would be earning 11 per cent. That is, a man who refuses to spend \$1,000 on better construction or equipment when he could thereby save \$200 a year on his insurance premiums is refusing an investment that would pay (that is save) him 25 per cent. a year.

That is, the saving in insurance premiums alone will yield a large earning on the cost of better construction and equipment, but to this must be added all the advantages that are attendant upon uninterrupted conditions, the saving in worry, the greater safety of life, the greater stability of economic conditions.

The accomplishments in this line are most spectacular in the case of factory mutuals and the factory insurance associations. Manufacturers are keen students of expense and efficiency and if fire prevention has appealed to them as a good investment the public may well follow their lead.

Good construction is the basis for fire prevention; but new buildings form only a small part of a city and it is years before their effect will be greatly felt. To a city as a whole, therefore, good construction avails mostly for the future.

The conflagration hazard in New York is due mostly to the thousands of old buildings, built in the days when neither steam nor electricity nor gas were important features of the hazard. They are not adapted to modern conditions. There are then a great number of buildings that will burn if a fire starts and the practical problem is either to prevent the fire from starting or to prevent it from getting a headway. Here is one field for the

automatic sprinkler. Its use should unquestionably be extended. It is even desirable that the installation of sprinklers in certain classes of buildings, in basements perhaps, in schoolhouses, in crowded city factories should be made compulsory.

There will always be a fire hazard on stocks of merchandise, and in general on contents of buildings, however good the buildings themselves are. Here also, therefore, the automatic sprinkler has a tremendous field of usefulness.

The most hopeful lines along which this problem of waste may be attacked are first, the awakening of people to a sense of the waste and shame and horror of fire, and an education in what should be done to improve conditions. A number of fire marshals in different states have undertaken this work of education; some good literature of this kind has been issued in Ohio, for instance; in Nebraska one day a year is set aside in the schools as fire day, on which the pupils receive special instruction and demonstration concerning fire, and a text-book has been prepared for use in the schools of the state.

The National Board of Fire Underwriters and the National Fire Protection Association are both engaged in educational work and will be glad to co-operate with individuals or associations or committees who wish to give this matter attention.

The second way to work for improved conditions is through the creation of the office of Fire Marshal. It should be the duty of the fire marshal to investigate and make a record of every fire, and this record should include the cause of the fire, in order that it may serve as a basis for a study of the fire hazard.

It would be desirable (but possibly at present impracticable) if every person upon whose premises a fire starts should be required to go on his own initiative and report the fire and the circumstances to the fire marshal. This in itself would go far to reduce the number of incendiary fires. The fire marshal should also maintain an inspection bureau whose duty it should be to see that premises were kept in good order and that in general strict fire preventive conditions were maintained. It might well be provided further that no insurance company should pay a loss until authorized by the fire marshal, or at any rate that the fire marshal should have the right to order payment stopped in suspicious cases pending an investigation.

A third method of improving conditions is through better building laws. The importance of fire-prevention, even from a purely financial point of view, should be brought to the attention of municipal officers, and a stringent building code enacted. This should not only be done by cities but by states as well.

Several years ago a Model Building Code was prepared by the National Board of Fire Underwriters and sent out to city officials all over the country. A number of cities have adopted this code in full or in part. A new edition is being printed and the National Board has made plans to give expert advice to those who wish to interest themselves in this matter.

OTHER MATTERS.

Evidence was presented to the Committee against a large corporation, whose principal business is the loaning of money on bond and mortgage, to the effect that in making its contracts to loan money on buildings it refused to accept insurance as an additional collateral to the mortgage with those certain fire companies, no matter how good their financial stability, which refused to purchase bonds of another corporation closely allied with the one in question. While this practice does not commend itself to the Committee as being altogether admirable or particularly broad-gauged, still it cannot conclude that it evidenced any inherent vice. A man or a corporation in the business of loaning money on bond and mortgage should continue to have the right to name his collateral, and to state the conditions under which the loan will be made or continued.

It would be dangerous intermeddling with business affairs to attempt to lay down in a statute what collateral should be accepted by the lender. If any illegal conspiracy exists between corporations or individuals to injure another corporation or person the law now provides ample relief. The evidence, however, does not convince your Committee that legislation to prevent the alleged acts of the corporation in question is desirable.

PART III.

Recommendations.

The foregoing discussion has outlined in detail the Committee's views upon the many branches of this important subject. Its conclusions have been stated in general terms. It now remains to state specifically what is recommended to the Legislature for action. Your Committee realizes fully that there will always be conflicting views on what ought to be done in reference to a subject so vast and so full of vital interest to the people, and concerning which there are so many complications. With an endeavor, however, to act in a spirit of absolute fairness to all parties in interest, having in mind on the one hand that the large and substantial organizations which have been furnishing indemnity to the public are entitled to have their case weighed conservatively, and on the other hand that the people who pay the premiums are entitled to equal consideration, the Committee recommends on the various questions involved in this inquiry, as follows:

VALUED POLICY.

As to a valued policy law: that the Legislature resolutely refuse to countenance this species of insurance heresy. In principle it violates the fundamental idea of insurance — indemnity, it tends to place a premium on arson and unnecessarily puts temptation in the way of the insured when prosperity fails. Nowhere does such a law seem to have any good effect and the consensus of opinion among insurance men and laymen is that it is dangerous legislation.

COINSURANCE.

Your Committee recognizes the coinsurance clause as a valuable basis for equitable rating and recommends that its use be permitted. Your Committee recommends to the companies that they use all means in their power when a coinsurance clause is attached to a policy to make clear to the insured, first, that his policy contains such a provision, and, second, what it means.

ANTI-COMPACT AND RATING EXCHANGES.

As to the so-called anti-compact law: for the many reasons given, your Committee believes that it would be most unfortunate

for the public if a condition of open competition in rates were forced by the State. The safe policy to follow in treating this subject is to recognize the good which flows from combination well regulated; to permit the companies to use rating associations and bureaus to develop the principle of schedule rating and to spread the cost of determining proper rates among the companies, and to permit them to agree to maintain those rates.

It is therefore recommended that no anti-compact bill be passed, but that in place thereof a statute be enacted that will permit combination under State regulation, such regulation to stop short of actually fixing the price at which the companies shall sell their insurance, but which shall be of such a positive nature that all forms of discrimination in rates will cease; such statute to provide for the filing by such associations and bureaus of all schedules and specific rates with the Insurance Department, and also that all such associations and bureaus shall be subject to the closest supervision by the Superintendent of Insurance, and further that all such associations and bureaus shall keep careful records of their proceedings, and provide for the hearing of interested property-owners who feel aggrieved at the rates charged,—all to the end that the potent power of publicity may operate freely to cure any arbitrary action or indefensible methods.

And such statute should also provide that while companies may maintain proper rate-making associations and exchanges and agree to maintain the rates so made, they must not seek to strengthen their own agreement by forcing third persons to help them do so.

In other words the licensing of and control over brokers should cease, and the present situation wherein rate-making exchanges and associations wield a power which properly belongs to government should be ended. As before indicated, the Committee's judgment is that the companies have made out a case to justify their joint action in the making of rates, but they have not shown that they should be permitted to coerce a large body of several thousand men, who are making their living by bringing business to the companies, into helping to maintain rates for the companies.

The companies should depend upon their own business integrity in the carrying out of their agreement. They should not be

permitted to remove temptation from themselves and shift the responsibility of maintaining rates to the shoulders of men who have had nothing to do with making them. The good which flows from the conditions that the exchanges now demand of the brokers concerning the giving of rebates can be preserved in a statute on that subject.

STATE LICENSE LAW.

Inasmuch as one important reason for the licensing of brokers by the companies was to exclude untrustworthy persons from the fire insurance field, it is deemed desirable that such legislation be enacted as will carry out this idea; that no person shall be permitted to sell or to procure fire insurance, either as an agent or broker, until he shall have a certificate from the state of New York giving him the proper authority so to do.

The state has already successfully dealt with this subject as it affects life insurance and the Committee believes that a substantially similar statute should be enacted to govern similar conditions in fire insurance. Therefore it is recommended that a law be passed placing with the Superintendent of Insurance the responsibility and the duty of issuing certificates of authority to those persons who are trustworthy and competent to transact this business, and providing that such certificates of authority when issued shall be revoked upon its appearing to the Superintendent that the holders thereof have violated the law or have become untrustworthy, or have demonstrated their incompetency.

As to the suggestion which has been frequently made that agents and brokers should be licensed only after an examination in which they have demonstrated their fitness, the Committee feels that such a system would necessarily involve the creation of new offices, or at least of a board of State examiners, at considerable expense, and that therefore the whole matter could better be left with the Superintendent of Insurance to work out, giving him a wide discretion, which will allow him to use all means to gain knowledge about applicants for certificates which are available to him or his corps of assistants. If he determines that a convenient way to determine competency is by a written examination his Department examiners may prepare and conduct such examination as may be necessary.

ANTI-REBATE LAW.

Along with an act pertaining to the licensing of agents and brokers, and as a proper restriction upon the manner in which such persons should conduct the business of fire insurance, should be enacted a law which prevents rebating in all its forms,— this for the reason that rebates in any form unsettle the business and lead to unfair discrimination between individuals.

CONFLAGRATION HAZARD.

Your Committee is not prepared to recommend that the State interfere with the companies in the conduct of their business to the extent of fixing the limit of insurance which can be written by the various companies in districts in which insurable values are congested. It does feel, however, that the insuring public is entitled to full and exact knowledge on the subject which will throw light upon the conditions of the various companies and the manner in which their underwriting is carried on. Therefore, it recommends, in addition to the information now set forth to the Superintendent of Insurance in the annual statement of companies, that the amounts at risk in the congested value districts in large cities be shown therein and be made a matter of public record.

In fairness to the companies, however, the law should permit them to state how much of such contingent liability is reinsured in other authorized companies and how much in unauthorized companies. The duty of fixing the boundaries of the congested value districts should be left by the statute with the Superintendent of Insurance so that he can upon conference with the underwriters determine the question fairly and from time to time make such changes therein as may prove necessary.

MUTUAL COMPANIES.

It seems highly desirable that as many solvent, well-organized and well-conducted companies should be admitted to this state as desire to do business here. The more responsible companies there are to do such business the better will the fire loss be distributed and the more equitable will rates become. It is recommended that the law pertaining to the admission of mutual companies of other states be so amended as to make possible the admission, always subject to the approval of the Superintendent of

Insurance, of such organizations as the New England Factory Mutual Companies, and also a large number of miscellaneous mutual companies of other states of proven worth; this can be done by removing the requirement of the law as to a deposit in the home state.

To insure the entry of responsible companies only, however, such law should require any mutual company which desired admission to comply with certain specific conditions that would guarantee solvency.

LLOYDS AND INTER-INSURERS.

For the reasons already expressed your Committee believes that the organization of more responsible Lloyds and inter-insurance associations would be for the benefit of the insuring public. Therefore it recommends that the law be amended by the insertion of two new sections in article 10 of the Insurance Law which shall provide for the organization and supervision of such associations, requiring in addition to the unearned premium fund on all policies in force that each such association hereafter formed be possessed of a guaranty fund of at least \$200,000 over and above all liabilities. Such a law while permitting new Lloyds and inter-insurance associations to be organized, will adequately protect the public in its dealings with them. It also recommends that the law be so amended as to permit the admission into this State of such thoroughly responsible Lloyds and inter-insurance associations of other states as may be, under proper restrictions, authorized by the Superintendent of Insurance.

STANDARD POLICY.

No change in the standard form of fire insurance policy is recommended. On account, however, of the expressed desire upon the part of a number of companies to change some of the provisions, agreements and conditions which are now permitted to be indorsed upon such policies, it seems desirable that such changes should be made as are in the interests of the insured and as may meet the approval of the Superintendent of Insurance. Therefore, it is recommended that the companies be permitted during the current year to submit to the Superintendent for his approval such changes in these conditions as they may wish to make.

AMENDMENTS AFFECTING COUNTY AND TOWN CO-OPERATIVE INSURANCE COMPANIES.

It is recommended that an amendment be made to the Insurance Law permitting such companies as were insuring mercantile, manufacturing and country hotel risks prior to July 1, 1910, when article 9 of the Insurance Law took effect to continue the writing of such risks in amounts not exceeding \$4,000.

SURPLUS LINES.

It is recommended that section 137 of the Insurance Law be amended so as to permit agents now licensed under that section of the law to issue and countersign policies of insurance to cover only surplus line risks, providing that such policies contain a provision that the agent issuing the policy shall be the agent upon whom service of process in this state can be made. The law, however, should not be changed so as to prevent such a licensed agent from *procuring* surplus line insurance as he may now do under the provisions of the section. The amendment should relate only to the issuing and countersigning of policies within this State.

STATE FIRE MARSHAL LAW.

Your Committee believes that at the root of the whole question of fire insurance is the consideration of fire prevention and that all means possible should be taken by the State to prevent fire waste. Therefore, it recommends the enactment of a State Fire Marshal Law to the end that better conditions may prevail. Such a statute has been prepared and it has been the aim of your Committee to embody therein the strongest points of similar laws of other states, as well as such additional suggestions which seemed of value as have been made in the course of the inquiry.

CLASSIFICATION OF LOSS EXPERIENCE.

In view of the apparent difficulty which would attend the classification of the loss experience of the various companies if each state required the classification to be kept differently for each, it is not recommended that companies at present be required to keep and report their loss experience according to a common

plan. Your Committee believes, however, that if the companies and the various Commissioners of Insurance of the different states should agree upon such a common plan which all companies doing business in this country could and would follow, that a great step toward reducing the business to a scientific basis would have been taken. It therefore recommends to the Superintendent of Insurance that he take up this question with the Commissioners of other states and with the companies, in an endeavor to work out a practical plan which will eventually result in producing a classification of loss experience of such an extent and volume as will furnish a basis upon which the true burning-ratio in the various classes of risks throughout the country can be determined.

BUILDING CODES.

The value of better building codes and their rigid enforcement is acknowledged. Without specifically recommending a statute upon the subject, the Committee makes the recommendation to the Legislature that it frame and enact a comprehensive State Building Law, the principles of which shall be observed in the building codes of the various municipalities in the state and which will apply uniformly. The National and New York Boards of Fire Underwriters and the National Fire Protection Association will doubtless co-operate in the framing of such a statute and the Committee commends them to the Legislature for the useful work they have already done along this line.

Bills carrying into effect the recommendations herein made are submitted herewith.

All of which is respectfully submitted.

Dated, February 1, 1911.

On behalf of the Senate,

ALEX. BROUGH,
VICTOR M. ALLEN.

On behalf of the Assembly,

EDWIN A. MERRITT, JR.
WM. W. COLNE,
FRED'K R. TOOMBS,
FRANK F. YOUNG.

As to that part of this report which deals with the subject of corruption and corrupt practices and contains the findings upon the testimony taken, we make no comment, except to say that we were not informed by counsel for the Committee during the course of its investigation of any matters tending to show corruption which came to the notice of counsel. The only knowledge we had was that disclosed as the testimony was given from day to day at the public hearings.

We concur, however, in the recommendation proposing the enactment of a statute intended to promptly expose the offer of a bribe.

We concur in the findings and recommendations relating to the subject of fire insurance. As to the findings and recommendations concerning the methods of the various fire insurance exchanges and other rate-making bodies throughout the state we concur in the recommendation requiring the filing of rates and schedules with the Superintendent of Insurance and believe that such publicity will be beneficial. We think, however, that this in itself will not bring about the object desired, namely, the maintenance of equitable and just rates. Inasmuch as fire insurance is so vital and necessary and of such vast importance affecting as it does the entire business interests of the state, we make the further recommendation that some supervision be had over the rate-making bodies, which the testimony disclosed are in the nature of monopolies and from whose decisions there is no appeal by the assured.

We propose that a bureau be created in the office of the state Superintendent of Insurance with power upon the filing of a complaint to order a revision or modification of rates if they are found, after investigation, to be unreasonable, excessive, arbitrary or unwarranted.

**ROBERT F. WAGNER,
JAMES A. FOLEY.**

PROPOSED STATUTES AND AMENDMENTS.

AN ACT to amend article one hundred and twenty-four of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime," constituting chapter forty of the consolidated laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article one hundred and twenty-four of chapter eighty-eight of the laws of nineteen hundred and nine is hereby amended by the addition thereto of a new section, to be known as section thirteen hundred and twenty-eight-a, to read as follows:

§ 1328-a. *A member of either of the houses composing the legislature of this state, to whom a person shall offer, or cause to be offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, or when any person shall attempt, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, who shall fail to immediately submit the facts in relation thereto to the house of which he is a member, if the house be in session, or if not in session, at the next session thereof, and to the district attorney of the county in which the offer or promise was made, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.*

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing for a notice to be printed on the cover of policies of mutual fire insurance companies and in relation to the conditions which may be indorsed upon the standard fire insurance policy.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and twenty of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-

eight of the consolidated laws," is hereby amended to read as follows:

§ 120. What to appear on face of policy. Every domestic mutual fire insurance corporation shall embody the word "mutual" in its title, which shall appear on the first page of every policy and renewal receipt. Every fire insurance corporation doing business as a cash stock corporation shall upon the face of its policy in some suitable manner express that such policy is a policy in a stock corporation. *Every policy issued in this state under the terms of which the insured named in such policy is liable in any event to pay an assessment in addition to the premium stated in the policy, shall have visibly printed in red ink upon the back or the outside cover thereof, under the name of the corporation, association or person issuing the same, in plain type, the words: Notice: under the terms of this policy the insured is liable for future assessments.*

§ 2. Section one hundred and twenty-one of said chapter is hereby amended to read as follows:

§ 121. The printed blank form of a contract or policy of fire insurance, with such provisions, agreements or conditions as may be endorsed thereon or added thereto and form a part of such contract or policy, heretofore filed in the office of the secretary of state by the superintendent of insurance or by the New York board of fire underwriters pursuant to the provisions of chapter four hundred and eighty-eight of the laws of eighteen hundred and eighty-six shall be transferred by the secretary of state to the office of the superintendent of insurance and, together with such provisions, agreements or conditions as may previous to the thirty-first day of December, nineteen hundred and [one] eleven, be filed by the New York board of fire underwriters in the office of the superintendent of insurance and approved by him, which provisions, agreements or conditions shall be void if they are inconsistent with the standard fire insurance policy heretofore filed in the office of the secretary of state, shall be known and designated as the standard fire insurance policy of the state of New York. No fire insurance corporation, its officers or agents, shall make, issue, or deliver for use, any fire insurance policy or the renewal of any such policy on property in this state, other than such

as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with such printed blank form of contract or policy; and no other or different provision, agreement, condition or clause shall be in any manner made a part of such contract or policy or indorsed thereon or delivered therewith, except as follows, to-wit:

1. The name of the corporation, its location and place of business, date of its incorporation or organization, whether it is a stock or mutual corporation, the names of its officers, the number and date of the policy, and if issued through a manager or agent the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the corporation at"

2. Printed or written forms of description and specification, or schedules of the property covered by any particular policy, and any other matter necessary to clearly express all the facts and conditions of insurance on any particular risk not inconsistent with or a waiver of any of the conditions or provisions of the standard policy herein provided for.

3. With the approval of the superintendent of insurance, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies, not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements or conditions of the policy under a separate title as follows: "Provisions required by law to be stated in this policy." After the first day of January, nineteen hundred and eleven, such policy or contract may be printed, written or typewritten with any size of type or on any size or shape of paper which shall have the written approval of the superintendent of insurance.

The name, with the word "agent" or "agents," and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise, may be endorsed on the outside of such policies.

Two or more fire insurance corporations, authorized to transact business in this State, may issue a combination standard form policy, using a distinctive title therefor, which title shall appear at the head of such policy followed by the titles of the several

corporations obligated thereupon, and which policy shall be executed by the officers of each of such corporations; provided, that before such corporation shall issue such combination policy, they shall have received the express permission of the superintendent of insurance to issue the same, and the title of such proposed policy and the terms of the additional provisions thereof, hereby authorized, shall have been approved by him, which terms, in addition to the provisions of the standard policy and not inconsistent therewith, shall provide substantially under a separate title therein, to be known as "Provisions specially applicable to this combination policy," as follows: (a) That each corporation executing such policy shall be liable for the full amount of any loss or damage, according to the terms of the policy, or a specific percentage thereof; (b) that service of process, or of any notices required by the said policy, upon any of the corporations executing the same shall be deemed to be service upon all; and provided, further, that the unearned premium liability on each policy so issued shall be maintained by each of such corporations on the basis of the liability of each to the insured thereunder.

§ 3. This act shall take effect September first, nineteen hundred and eleven.

AN ACT to amend the insurance law, so as to permit licensed agents to issue and countersign policies to cover surplus line insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and thirty-seven of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 137. License to agents in excepted cases. The superintendent of insurance, in consideration of the yearly payment of two hundred dollars, except in counties having less than one hundred thousand inhabitants, in which case the fee shall not exceed twenty-five dollars, may issue to citizens, firms or corporations [of this state] not exceeding two hundred in number, a license

revocable at any time, permitting the party named in such license to act as agent to procure *from or to issue and countersign* policies of fire insurance [from] of corporations, persons, partnerships and associations which are not *otherwise* authorized to do business in this state. [Before] When any policies of fire insurance shall be procured, *or issued and countersigned*, under or by virtue of said license, there shall be executed by the licensed agent and by the party desiring an insurance, an affidavit in duplicate, one of which shall be filed in the insurance department and the other in the clerk's office of the county in which the property proposed to be insured is located, within thirty days after the procuring of such insurance. Such affidavits shall set forth that the party desiring insurance is, after diligent effort, unable to procure the amount required to protect the property owned or controlled by him from the insurance corporations duly authorized to transact business in this state. The agent procuring *or issuing and countersigning* policies in such unauthorized corporations or with persons, partnerships and associations, shall keep a separate account thereof, open at all times to the inspection of the superintendent, showing, first, the exact amount of such insurance placed for any party; second, the gross premiums charged thereon; third, in what corporation, or with what persons, partnerships or associations; fourth, the date of the policy; fifth, the term thereof, and sixth, the cities and villages *within this state* in which the insured property is located. Each party receiving such license shall, before transacting business thereunder, execute and deliver to the superintendent a bond to the people of the state, in the penal sum of two thousand dollars, with such sureties as the superintendent shall approve, conditioned that the said agent will faithfully comply with all the requirements of this chapter, and will pay to the treasurer of the Volunteer Firemen's Association of the state of New York, to be expended for the use and support of the Volunteer Firemen's Home, located at Hudson, Columbia county New York, for the uses and purposes of said association, or where such policies cover risks in cities of over one million inhabitants, having a fire patrol or salvage corps, to the treasurer of such fire patrol or salvage corps, in January and July of each year, a sum equal to three per centum upon the amount of the gross premiums charged to policy holders *less the amount of the*

gross premiums returned to the insured upon all policies procured, or issued and countersigned by him during the preceding six months, pursuant to this article; and in default of payment to the treasurer of any fire patrol or salvage corps of any sum to which it may be entitled pursuant to the provisions of this section, or the treasurer of the said Volunteer Firemen's Home Association of the sum due them, the treasurer of said fire patrol, salvage corps or association may sue for the same in any court of record in this state. All fire insurance policies issued to residents of this state on property located herein by companies that have not complied with the requirements of the general insurance laws of the state, shall be void, except such as shall have been procured, or issued and countersigned as herein set forth. All policies issued or countersigned by such agents shall contain the provisions of the standard policy provided for by section one hundred and twenty-one of this chapter and a further provision that service of a summons or other legal process may be made on the licensed agent issuing or countersigning the same and that such service shall be equivalent to the personal service within this state of such process on the persons, associations or corporations obligated under any such policies; and such policies shall have printed in red ink upon the outside cover thereof, under the name of the corporation or association issuing same, in plain type, the words: Surplus line insurance only; this company (person, partnership, or association, as the case may be) is not supervised by the New York State Insurance Department; issued by, licensed agent, address

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing that persons, associations and corporations doing a fire insurance business in this state shall report the amounts at risk in congested value districts.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws,"

is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty, and to read as follows:

§ 140. *Amount at risk in congested value districts to be reported.* Every association, corporation or person authorized to do the business of fire insurance within this state shall report in the annual statement required to be filed by section forty-four of this chapter the total amount which said persons, associations or corporations have at risk on policies of insurance issued by them or on contracts or treaties of reinsurance which covers and insures property located in the congested value districts of all cities in the United States of over three hundred thousand inhabitants. Such reports shall show: (a) The total amount which each such person, association or corporation has at risk by reason of its outstanding policies of insurance or contracts of reinsurance covering property in such districts; (b) the total amount of such insurance which is re-insured with persons, associations or corporations which are authorized to do business in this state; (c) the total amount of such insurance which is reinsured with persons, associations or corporations not authorized to do business in this state. The boundaries of such districts shall be fixed and defined from time to time by the superintendent of insurance.

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing for the regulation and supervision of rate making associations.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-one thereof, and to read as follows:

§ 141. *Rate making associations.* Every association or bureau which now exists or hereafter may be formed for the purpose of making rates of fire insurance on property located in this state

shall be subject to the visitation and supervision of the superintendent of insurance who shall cause an examination of each such association or bureau to be made at least once a year, and shall make public the results thereof, and shall report to the legislature in his annual report on the methods of such associations or bureaus and the manner of their operation.

Every such association or bureau shall file with the superintendent of insurance all schedules of rates fixed or made by it, which shall include in every instance the basis rate on each class of property concerning which rates are made, and all forms of warranties and all credits, charges, terms, conditions or privileges and any other matters which may affect such rates or the application of such schedules; it shall also file the specific rates on all property where such rates have been fixed in those cases, if any, where the general schedules so filed do not apply, with a full explanation of the reason for such specific rate or rates; it shall also file immediate notice of any change in such schedules or rates and the causes therefor; it shall also file such further information as to such schedules or rates as may be required by the superintendent; no such association or bureau or any person, association or corporation authorized to transact the business of fire insurance within this state shall fix or make any rate or schedule or any credit therein which is to apply to any risk on the condition that the whole amount of insurance on such risk or any specific part thereof shall be placed at such rate, or with the members of such association or bureau, or with a specified class of insurers; or shall fix or make a schedule of rates or charge a rate which discriminates between risks of essentially the same hazard and which are similarly protected against fire within this state; whenever it is made to appear to the satisfaction of the superintendent of insurance that such discrimination exists he may, after a full hearing, either before himself or a special deputy appointed for such purpose whose report he may adopt, order the rates on such risks to be made uniform, and all such associations, bureaus, persons or corporations affected thereby shall immediately comply therewith; no such association or bureau shall be permitted hereafter to license brokers to transact the business of fire insurance, nor shall it or any two or more persons, associations or corporations authorized to transact the business of fire insurance.

within this state, acting in agreement, refuse to do business with or pay commissions to any person who may be licensed by the superintendent of insurance as a fire insurance broker, upon the ground or for the reason that such broker offers insurance to other persons, associations or corporations not members of such association or bureau or parties to such agreement, or because such brokers will not agree to secure insurance only at the rates fixed by such association or bureau, or seek to restrain or interfere with any such licensed broker in the transaction of his business, in any manner other than by proceeding against such broker according to law for violation thereof.

Every such association or bureau shall keep a careful record of its proceedings and shall furnish upon demand to any person on whose property a rate has been made, or his authorized agent, full information as to such rate and if such property be rated by schedule a copy of such schedule; it shall also provide such means as may be approved by the superintendent of insurance whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee of such association or bureau on an application for a change in such rate or rates.

§ 2. This act shall take effect September first, nineteen hundred and eleven..

AN ACT to amend the insurance law by providing that no commissions are to be paid agents or brokers for fire insurance unless they are authorized by a certificate of authority to transact a fire insurance business.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-two, and to read as follows:

§ 142. *Business to be accepted from licensed agents and Brokers only; Agents' and Brokers' Certificates of Authority. No corporation, association or person authorized to do a fire*

insurance business within this state, or agent thereof, shall pay any commission or any other compensation to any person for services in obtaining any such insurance upon property located within this state, unless such person shall have first procured from the superintendent of insurance a certificate of authority to act as an agent of such corporation, association or person, or as a broker to solicit such insurance as hereinafter provided. No person or corporation shall act as agent, subagent, or broker in the solicitation or procurement of applications for such insurance, or receive for services in obtaining such insurance any commission or other compensation from any corporation, association or person authorized to do a fire insurance business in this state, or agent thereof, without first procuring a certificate of authority so to act from the superintendent of insurance, which must be renewed annually on the first day of January, or within six months thereafter. The certificates of authority to be issued by the superintendent of insurance under this section shall be divided into two classes, namely, one class by which the holders thereof shall be authorized to act as agents, and the other by which the holders thereof shall be authorized to act as brokers. The fee to be paid to the superintendent of insurance by the applicant at the time application is made shall be, for each agent's certificate two dollars, and for each broker's certificate ten dollars. Such certificates shall be issued by the superintendent of insurance only upon the written application of persons and corporations desiring such authority, and in the case of agents or corporations applying for such certificates of authority to act as agent, such application must be approved and countersigned by at least one of the corporations, associations or persons such applicant desires to represent; all such applications shall be upon forms approved by the superintendent of insurance, giving such information as he may require. The superintendent of insurance shall grant any such certificate of authority if he is satisfied and determines that the person or corporation making the application for such certificate is trustworthy and is competent to transact the business for which the application of such certificate is made, as agent or broker as the case may be, and such certificate of authority may be revoked by the superintendent of insurance upon it appearing to him that such agent or broker has ceased to be competent or trustworthy, or has violated any provision of this chapter,

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or has issued or procured insurance on any property located in this state in behalf of or from any person, association or corporation not permitted by this chapter to write such insurance, or has refused or refuses to return to any corporation, association or person any part of any commissions paid to him or it on policies which have been subsequently canceled, unless such person or corporation is relieved from such obligation by any person, corporation or association who was liable on such policy as insurer. No such certificate shall be valid, however, in any event, after the first day of July of the year following the issuing of the same. Such certificates of authority shall be executed in triplicate; one copy thereof shall be filed in the office of the superintendent of insurance, and two copies thereof shall be issued to such agent or broker; one of which copies such agent or broker shall, within thirty days after such certificate of authority is issued, cause to be filed in the office of the clerk of the county in which such agent or broker resides or has his or its principal place of business, or, if a nonresident, in the office of the clerk of the county in this state in which he or it has an office for the transaction of business. Any person or corporation violating the provisions of this section shall forfeit to the state the sum of five hundred dollars.

§ 2. This act shall take effect January first, nineteen hundred and twelve.

AN ACT to amend the insurance law by prohibiting rebating and discrimination in relation to premiums paid for fire insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting in article three of said chapter a new section, to be section one hundred and forty-three, and to read as follows:

§ 143. *Rebating and discrimination prohibited. No insurance corporation, association, partnership, Lloyds, or individual underwriters authorized to do the business of fire insurance within this*

state, or any officer, agent, solicitor or representative thereof, shall make any contract of fire insurance on property located within this state or agreement as to such contract, other than as plainly expressed in the policy issued or to be issued thereon; nor shall any such corporation, association, partnership, Lloyds or individual underwriters, or officer, agent, solicitor, or representative thereof, directly or indirectly, in any manner whatsoever, pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, or give, sell or purchase, or offer to give, sell or purchase, as inducement to such insurance, or in connection therewith, any stock, bonds or other securities of any insurance company, or other corporation or association, or any dividends or profits accrued thereon, or anything of value whatsoever, not specified in the policy, nor shall any fire insurance broker, his agent or representative, or any other person, directly or indirectly, either by sharing commissions or in any manner whatsoever pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy; nor shall the insured, his agent or representative, directly or indirectly, accept or knowingly receive any such rebate from the premium specified in the policy; this section shall not prevent any corporation, person, partnership or association lawfully doing the business of fire insurance in this state from the distribution of surplus and dividends to policyholders after the first year of insurance; nor shall this section prevent any such corporation or other insurer, or his or its agent, from paying commissions to the broker who shall have effected the insurance.

No person shall be excused from attending and, when ordered to do, from testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or

evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or to produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Any person or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall forfeit to the people of the state the sum of five hundred dollars for each such violation.

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law by providing for the admission of certain mutual fire insurance corporations of other states.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and forty-nine of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 149. Authorization of foreign mutual fire insurance corporations. Every mutual fire insurance company or association incorporated under the laws of any other state of the United States may be permitted to do business in this state by the superintendent of insurance on filing with him the following:

(a) A certified copy of its articles of incorporation or association and of its by-laws.

(b) A consent, duly executed, appointing the superintendent of insurance to be the true and lawful attorney for such company or association in and for this state, upon whom all legal process in any action or proceeding against the company or association may be served with the same effect as if it was a domestic company or association. Service upon such attorney shall thereafter be deemed service upon the company or association.

(c) An agreement that it will pay the taxes provided for in section one hundred and forty-nine-a of this chapter, and that it will furnish any further information as to its financial condition, and the premiums collected by it within this state, as the superintendent of insurance shall require.

(d) And each such company shall pay to the superintendent of insurance the fees required by section six of this chapter.

Provided, that no such certificate of authority shall be granted unless such company shall [keep on deposit with the superintendent of insurance of this state or with the auditor, comptroller or general fiscal officer of the state by whose laws it is incorporated, the sum of two hundred thousand dollars, in securities of the kind and character in which domestic fire insurance companies are required to invest as minimum capital investments by section sixteen of this chapter. The superintendent of insurance shall be furnished with a certificate of such auditor, comptroller or general fiscal officer, under his hand and official seal, that he, as such auditor, comptroller or general fiscal officer of said state, holds in trust and on deposit for the benefit of all the policyholders of the corporation such stock and securities. Such certificate shall embrace the items of securities so held and shall state that the officer making it is satisfied that the securities are worth the amount herein required; and

Provided, further, that such company shall annually file satisfactory proof with the superintendent of insurance that it has and maintains in addition to the foregoing deposit a reserve fund equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account charged to the policyholders on each respective risk from the date of the issue of the policy; and

Provided, further, that the certificate of authority granted by the superintendent of insurance, pursuant to the provisions of this act, to such insurance corporation to do business in this state, shall not remain in force for a longer period than one year. The statements and evidences of investment required by this act to be filed in the office of the superintendent of insurance before a certificate of authority is granted to such corporation, shall be renewed from year to year, and in such manner and form as the

superintendent may require, with an additional statement of the amount of premiums received, as required by this act, and losses sustained in this state during the preceding year, so long as such authority continues. If the superintendent is satisfied that the securities and investments remain secure and that it may be safely intrusted with the continuance of its authority to do business, he may grant a renewal of such certificate of authority.] *have at least five million dollars of insurance in force in not less than two hundred separate risks and shall have transacted a fire insurance business in its home state for at least ten years and shall have had insurance in force in at least the amount of five million dollars in each of the five years immediately preceding its application for admission to do business in this state; and shall have and maintain a reserve fund equal to the total unearned premiums on the policies in force calculated on the gross sum without any deduction on any account charged to policyholders on each respective risk from the date of the issue of the policy and in addition has a reserve or surplus or other net assets of at least fifty thousand dollars invested in securities of the kind and character in which domestic fire insurance companies are required to invest as minimum capital investments by section sixteen of this chapter, and in addition has contingent assets of at least fifty thousand dollars in the form of the obligations of policyholders to pay to such company such amount in the event the funds of such company fall below the amount required to meet all liabilities and to maintain the unearned premium reserve; and shall have net and contingent assets together in an amount equal to two per centum of the total insurance in force; and shall provide in all policies issued by it that the policyholder is liable, in addition to the original premium paid, to assessment in an amount at least equal to one year's premiums; provided, further, that no such company shall be exposed to loss to an amount exceeding ten per centum of its actual net and contingent assets upon property situated within the boundaries of one city block or on one group of buildings composed of attached or adjacent buildings which have less than sixty feet of clear space at all points between such buildings and other buildings; provided, further, that the certificate of authority granted by the superintendent of insurance pursuant to the provisions of this act to such*

insurance corporation to do business in this state shall not remain in force for a longer period than one year and that whenever the condition of any such corporation to which a certificate of authority has been granted is such that it cannot meet all the requirements of this section the superintendent of insurance shall forthwith revoke such certificate.

§ 2. Section one hundred and forty-nine-a of said chapter is hereby amended to read as follows:

§ 149-a. **[Tax on foreign mutual fire insurance corporation.]** Premium or Assessment Tax. Every mutual fire insurance company or association authorized to do business in this state pursuant to section one hundred and forty-nine of this chapter shall, *in lieu of all other taxes on premiums* annually, on or before the first day of February of each year, pay a tax of **[one]** *three* per centum on all **[gross]** *net* premiums or assessments collected or received *and retained* by it or them for such insurance upon property situate within this state during the preceding year ending the thirty-first day of December to the Superintendent of Insurance. *The term "net premium or assessments" shall in no event include any amounts returned to policyholders by way of unearned premiums on canceled policies, returns on account of reduction of rates or any dividends whatsoever.* On or before the first day of February of each year every such company or association shall file with said superintendent a **[detailed]** statement showing the **[gross]** *net* amount of premiums and assessments collected *and retained* during the preceding year, for insurance upon property located in this state **[and specifying the amounts of premiums and assessments so collected by city, town, village or fire district in which the property covered by such insurance is located]**. In case any such company or association shall neglect or refuse to make and file such report, or pay the tax imposed in this section, its certificate of authority to do business in this state shall be revoked by the superintendent of insurance and it shall forfeit the sum of one hundred dollars for each day after the first day of February of each year that it shall omit to make and file such report, or shall neglect to pay the tax imposed by this section, which sum shall be collected in an action in the name of the people of the state of New York to be prosecuted by the superin-

tendent of insurance and collected by him. After the neglect or refusal of such company or association to make and file such report, or pay such tax, such company or association or its agents shall not effect any insurance on any property in this state.

§ 3. Section one hundred and forty-nine-c of said chapter is hereby amended to read as follows:

§ 149-c. Distribution of Tax. *Ten per centum of all* [All] moneys received by the superintendent of insurance under the provisions of section one hundred and forty-nine-a of this chapter shall be [distributed by him on April first of each year after deducting the expenses of the collection and distribution thereof, as follows: Ten per centum thereof] *paid* to the Firemen's Association of the state of New York for the support and maintenance of the Firemen's Home at Hudson, New York, and the balance [to the various associations, cities, villages and fire districts in the same manner and to the same extent as the tax imposed by section one hundred and thirty-three of this chapter is now received by them, except that in the cities of New York and Buffalo, he shall pay the same to the officers and associations now receiving the tax imposed on foreign fire insurance companies under the provisions of the charters of said cities. The superintendent of insurance shall appoint, for a term not exceeding his own term of office a suitable and competent person to collect and distribute the tax imposed by section one hundred and forty-nine-a of this chapter. The person so appointed shall receive such compensation for his services and disbursements as the superintendent of insurance shall fix, but the same shall be payable only from the moneys which the said superintendent shall receive under the provisions of said last mentioned section.] *shall be paid by him into the state treasury.*

§ 4. This act shall take effect immediately.

AN ACT to amend the insurance law, providing that those county and town co-operative associations which, prior to July first, nineteen hundred and ten, were issuing policies of insurance on mercantile and manufacturing risks in amounts not to exceed four thousand dollars may continue to issue such insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section two hundred and sixty-six of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," as amended by chapter three hundred and twenty-eight of the laws of nineteen hundred and ten, is hereby amended to read as follows:

§ 266. General provisions affecting assessment corporations only. The following provisions shall affect corporations doing business on the assessment plan, pursuant to the provisions of this article.

1. Such corporations may issue policies of insurance against any loss or damage to detached dwelling houses, barns, hop houses, cheese factories, creameries, school buildings and other buildings, and the contents of any such buildings, together with the live stock owned on the premises by the insured; provided that nothing herein contained shall authorize such corporations to issue policies on buildings used for hotel, mercantile or manufacturing purposes, *except that such corporations which were, prior to July first, nineteen hundred and ten, issuing insurance on such risks may continue to issue insurance thereon in amounts of not more than four thousand dollars on each separate risk*; and provided, further, that no such policy shall be issued for more than seven thousand dollars on any one risk, or, if such policy is against loss or damage by reason of larceny, to the extent of not more than five hundred dollars on any one risk.

2. Every such corporation may classify the buildings or property insured therein at the time of the insurance and issue policies under different rates.

3. Every such corporation may borrow, on the credit of the corporation, sufficient to pay any loss, or make an assessment upon all the property insured, pro rata, according to the classification or according to the amount insured, as may be provided in the by-laws, sufficient to pay such loss. If it is deemed to be for the best interest of the corporation, such corporation may estimate the amount necessary to pay all the losses and expenses for the current year and to supply any deficiency in the preceding year, and

assess and collect the same from the members of the corporation. Each assesment shall be made pro rata upon all the property at the time insured, according to its classification or according to the amount insured.

§ 2. This act shall take effect immediately.

AN ACT to amend the insurance law, in relation to the organization of persons, partnerships or associations engaging in the business of insurance as Lloyds or inter-insurers, and to permit the admission Lloyds of other states, and to provide for the forwarding of process by the superintendent of insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-five of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended to read as follows:

§ 35. Superintendent to forward process. Whenever lawful process against an insurance corporation *or one or more persons* shall be served upon the superintendent of insurance under the provisions of this chapter, he shall forthwith forward a copy of such process by mail, prepaid and directed to the secretary of the corporation *or to such person or persons* or in the case of corporations incorporated under the laws of any foreign government, to the resident manager or last appointed general agent of the corporation in this country.

For each copy of process the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff at the time of such service, to be recovered by him as part of the taxable disbursements if he succeeds in the suit.

§ 2. Section three hundred of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," as amended by chapter six hundred and thirty-eight of the laws of nineteen hundred and ten, is hereby amended to read as follows:

§ 300. Application of article. Notwithstanding the provisions of section fifty-four of this chapter, persons, part-

nerships or associations which, on October first, eighteen hundred and ninety-two, were lawfully and actually engaged in the business of insurance as Lloyds or inter-insurers or individual underwriters may, after January first, nineteen hundred and eleven, continue to do the business of insurance in this state, provided that such persons, partnerships or associations shall comply with the provisions of this article, but not otherwise. No persons, partnerships or associations other than those specified in this section, and which shall receive the certificate of insurance specified in section three hundred and one of this chapter, shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers.]; and such persons, partnerships and associations as may comply with and be licensed according to sections three hundred and four and three hundred and five of this article may do such insurance business as is therein permitted. Any persons, partnerships or association which, after January first, nineteen hundred and eleven, shall in this state engage in the business of insurance as Lloyds or inter-insurers, or represent or advertise that they are so engaged, without having been authorized so to do in accordance with the provisions of this article, and any agent, sub-agent, or representative of any such persons, partnerships, or association not so authorized to do such business in this state, who shall after January first, nineteen hundred and eleven, in any way represent any such unauthorized persons, partnerships or associations, directly or indirectly, in engaging or attempting to engage in the business of insurance in this state, shall be guilty of a misdemeanor.

§ 3. Section three hundred and two of said chapter is hereby amended to read as follows:

§ 302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section. No such persons, partnerships or associations who claim that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two, shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers, (a) unless there shall be on file in the office of the superintendent of insurance a copy of the original articles of association, co-

partnership agreement or inter-insurance contract, together with all amendments thereto, accompanied by an affidavit, verified by an attorney-in-fact, to the effect that it is a true copy, and stating where the principal office of such persons, partnerships or associations so doing such business is located, the kinds of insurance in which it is engaged, or in which it lawfully claims the right to engage, the name under which business is done and the names and post-office addresses of all the underwriters, inter-insurers and attorneys-in-fact so doing business as Lloyds or interinsurers, which affidavit shall be so verified not earlier than December fifteenth, nineteen hundred and ten; or (b) which shall change the name under which business is done, without first obtaining the written approval of the superintendent of insurance; or (c) which shall establish branches under other or different names or titles; or (d) which shall have a name so similar to that of any other Lloyds or insurance corporation as in the opinion of the superintendent of insurance is calculated to deceive, and any existing Lloyds having such a name may be required to change same by the superintendent of insurance; or (e) which does not maintain at all times, in addition to all outstanding claims and other liabilities, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sums without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy; or (f) which shall not have its assets invested as prescribed by section sixteen of this chapter; or (g) unless each of the underwriters shall be worth in his own right not less than twenty thousand dollars above all liabilities. such facts to be determined by the superintendent of insurance, and in determining same he may take the signed reports of commercial agencies having upwards of one hundred thousand subscribers. No such persons, partnerships or associations shall change the location of their principal office for the transaction of business without first filing with the superintendent of insurance the affidavit of an attorney-in-fact stating where such office is to be located, and in no event shall such office be located outside the state of New York. Every change in the underwriters, inter-insurers or attorneys-in-fact, made after the filing of the affidavit previously mentioned in this article, shall be reported to the su-

perintendent of insurance by a written verified statement of an attorney-in-fact within twenty days after the same has been made, which affidavit shall be accompanied by an agreement, executed and duly acknowledged, and binding the new underwriter or underwriters, inter-insurer or inter-insurers to the original agreement between all the underwriters or inter-insurers required to be filed by section three hundred and one of this chapter, with regard to the service of process. The underwriters' liability shall not be included in the statements or reports of such persons, partnerships or associations either as an asset or a liability and any deposit made by an underwriter with any such persons, partnerships or associations, if treated as an asset in any statement or report, shall also be charged as a liability.

§ 4. Article X of such chapter is hereby amended by adding thereto two sections to be known as sections three hundred and four and three hundred and five, and to read as follows:

§ 304. *General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven. On and after July first, nineteen hundred eleven, twenty-five or more persons, partnerships or corporations which have the requisite authority by their charters may engage in the business of such insurance as is specified in sections one hundred and ten and one hundred and fifty of this chapter as Lloyds or inter-insurers upon receiving a certificate of authority from the superintendent of insurance so to do. The application for such certificate of authority shall be signed by the attorney or attorneys-in-fact of those persons desiring such certificate and must be accompanied by a declaration which must set forth, (a) the name under which the business is to be conducted which name shall not be so similar to any existing Lloyds, inter-insurance association or corporation, as, in the opinion of the superintendent of insurance is calculated to deceive; (b) the exact location of the principal office at which the business is to be conducted, which office must be in the state of New York; (c) the kinds of insurance intended to be written, which must be only of those permitted by this section; (d) an exact copy of the articles of association, copartnership agreements or inter-insurance contract made between such underwriters or inter-insurers; (e) the names and addresses of all the underwriters or inter-insurers*

so proposing to engage in such business; (f) the designation and appointment of one or more attorneys-in-fact who shall be residents of this state, with full names and addresses, upon whom a summons or other legal process can be served; (g) that a fund of at least two hundred thousand dollars has been contributed by the subscribers as a guaranty fund for policyholders and is in the possession of the attorney or attorneys-in-fact for such subscribers and is either in cash or invested in such securities as are specified in section sixteen of this chapter. Such declaration must be signed and sworn to by all of the persons, and the proper officers of the corporations so proposing to engage in the business of insurance pursuant to this section. After such documents specified shall be filed, the superintendent of insurance shall cause an examination of such Lloyds or inter-insurance association to be made, and if he is satisfied that all of the facts alleged in the declaration are true and that the article of association, copartnership agreement or inter-insurance contract are of such a character that the rights of the policyholders will be protected thereunder, he shall issue a certificate of authority to do such business of insurance in this state as is specified in the declaration, which certificate shall be issued to such Lloyds or inter-insurance association, under the name chosen and approved, authorizing the underwriters or inter-insurers thereof to do the business permitted. Any such Lloyds and inter-insurance associations as may be thus authorized to do business in this state (1) shall at all times keep and maintain a fund of an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on the policies in force, calculated on the gross sums, without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (2) shall not change the name under which business is done without first obtaining the written approval of the superintendent of insurance; (3) shall not establish branches under other or different names or titles; (4) shall have its assets either in cash or invested as prescribed by section sixteen of this chapter; (5) shall notify the superintendent of insurance of any change in the location of its principal office for the transaction of business, which office shall always be in the state of New York, which said notice shall be in the form of a declaration

subscribed and sworn to by its attorney or attorneys-in-fact; (6) shall notify the superintendent of insurance of any change in its underwriters or inter-insurers, which notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys-in-fact; (7) shall not amend or change its articles of association, co-partnership agreement or inter-insurance contract without the approval of the superintendent of insurance, and a true copy of any amendment or change permitted shall be verified by an attorney-in-fact of such Lloyds or inter-insurance association and be filed with the superintendent of insurance; (8) shall notify the superintendent of insurance of any change in its attorney or attorneys-in-fact by filing with the superintendent of insurance an instrument revoking the designation or appointment of any attorney or attorneys-in-fact who are no longer to act for such underwriters or inter-insurers, and designating and appointing one or more attorneys-in-fact, residents of this state with full names and addresses, who shall thereafter be the attorney or attorneys-in-fact for such underwriters or inter-insurers, such instrument to be signed and sworn to by each and every of the underwriters or inter-insurers who shall then be doing business under such authority.

After any Lloyds or inter-insurance association is authorized to do business in this state, pursuant to this section, it may be joined by other and additional underwriters or inter-insurers, but in that event such underwriters or inter-insurers who may thereafter join such authorized Lloyds or inter-insurance association shall be held to be bound by the documents on file with the superintendent of insurance concerning such Lloyds or inter-insurance association in the same manner as though they had personally signed the same, and the attorney or attorneys-in-fact then authorized by the underwriters of such Lloyds or inter-insurance association to act for them shall thereafter and subject to the provisions of this section be the attorney or attorneys-in-fact for such additional underwriters, and service of a summons or other legal process on an attorney-in-fact for the underwriters of such Lloyds or inter-insurance association whose appointment is in force and so filed with the superintendent of insurance shall be equivalent to the personal service of such process on each and every of such underwriters and inter-insurers within this state.

The funds required by this section to be held by any Lloyds or inter-insurance association and all other undistributed funds held by it shall be liable primarily for the payment of any losses incurred under its policies, and any judgments recovered under any such policies against the underwriters thereon may be satisfied from such funds without regard to the extent of the various underwriters' interests therein, and such funds shall not be subject to the claims of general creditors of any of the underwriters of such Lloyds or inter-insurance association, other than policyholder creditors whose claims have arisen under their policies, until all policies under which any such underwriter is obligated have been terminated, and in that event the claims of such general creditors shall not be paid from such fund or be a lien upon any part thereof beyond an amount which when paid will leave intact and in the possession of such Lloyds or inter-insurance association an amount equal to the full unearned premiums on all policies in force and in addition the sum of two hundred thousand dollars as provided herein. Any clause in any policy issued by any such Lloyds or inter-insurance association which shall contain any provision inconsistent with this section shall be void.

§ 305. Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states. On and after July first, nineteen hundred and eleven, the superintendent of insurance may in his discretion issue a certificate of authority to a Lloyds or inter-insurance association domiciled in another state to do such insurance business in this state, for permission to do which application is made, and as may be authorized by the articles of association, partnership agreement or inter-insurance contract under which such Lloyds or inter-insurance association is operating, providing, however, that in no event shall authority be given to any such Lloyds or inter-insurance association to do other kinds of insurance business than those specified in sections one hundred and ten and one hundred and fifty of this chapter.

The application for such certificate shall specify the kinds of business such Lloyds or inter-insurance association desires authority to transact within this state; it must be signed by the attorney or attorneys-in-fact for such Lloyds or inter-insurance association and must be filed with the superintendent of insurance to

gether with, (a) a certificate from the insurance department of its home state that it has and maintains at all times an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on all policies in force, calculated on the gross sums, without any deduction on any account charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (b) a true copy of the articles of association, partnership agreement, or inter-insurance contract of such Lloyds or inter-insurance association, verified by its attorneys or attorneys-in-fact; (c) an agreement executed by an attorney or attorneys-in-fact for such Lloyds or inter-insurance association in such form as the superintendent of insurance may prescribe that it will not do any business in this state which a domestic Lloyds or inter-insurance association cannot do; (d) a declaration and agreement duly executed and acknowledged by each of the underwriters of such Lloyds or inter-insurance association, appointing the superintendent of insurance the true and lawful attorney for such Lloyds or inter-insurance association and the underwriters thereof in and for this state upon whom all legal process in any action or proceeding against the said Lloyds or inter-insurance association or the underwriters thereof may be served and that any service upon him shall be equivalent to the personal service within this state of such process on each and every of such underwriters or inter-insurers. If any such Lloyds or inter-insurance association is authorized to do business in this state, and, after such authorization, other underwriters or inter-insurers desire to join in issuing policies of insurance in this state with the underwriters or inter-insurers who have filed such declaration and agreement, they are authorized to so join upon filing similar declarations and agreements with the superintendent of insurance. The certificate of authority of any such Lloyds or inter-insurance association shall be revoked by the superintendent of insurance if at any time it appears that any underwriters or inter-insurers are issuing policies of insurance within this state, under apparent authority of such certificate without filing such declaration and agreement as aforesaid, or if such Lloyds or inter-insurance association does not maintain at all times the funds specified in this section, or has violated its agreement, or the law, or is

found to be in such a condition that the further transaction of business by it will be hazardous to its policyholders or its creditors or to the public.

Each such Lloyds or inter-insurance association shall pay the superintendent of insurance the fees required by section six of this chapter, and, in lieu of all other taxes upon premiums, shall annually on or before the first day of February in each year, pay to the superintendent of insurance a tax of two per centum on all net premiums collected or received by it for insurance upon property situate within this state during the preceding year ending the thirty-first day of December, which shall be paid by him into the state treasury.

§ 5. *This act shall take effect July first, nineteen hundred and eleven.*

AN ACT to amend the insurance law in relation to establishing the office of state fire marshal, defining his powers and duties, and providing for his compensation and the maintenance of his office.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by inserting therein a new article to be article ten-a thereof, and to read as follows:

ARTICLE X-A.

STATE FIRE MARSHAL.

Section 350. Office of state fire marshal established; appointment; term; salary.

351. Deputies.

352. Assistant officers.

353. Duties of the assistants to the state fire marshal to investigate the cause and origin of all fires.

354. Duties of the state fire marshal and assistants to inspect property.

Section 355. Powers of state fire marshal, deputies and assistants.**356. Records.****357. Annual report.****358. Witnesses.****359. Duties of district attorney.****360. Compensation of assistants.****361. Penalties.**

§ 350. Office of state fire marshal established; appointment; term; salary. The office of state fire marshal is hereby established. The governor is hereby authorized and empowered to appoint, within thirty days after this act shall take effect, by and with the advice and consent of the senate, a suitable person who shall be a citizen of this state, as state fire marshal, who shall hold the office until his successor is appointed and qualified. Such officer shall keep his office in the capitol in the city of Albany and may be removed for cause at any time by the governor. He shall receive an annual salary of four thousand dollars and shall be paid, in addition, his actual and necessary expenses incurred in the performance of the duties of his office. He shall devote his whole time to the duties of his office. Whenever there shall be a vacancy in the office of state fire marshal, the governor shall fill the vacancy for the unexpired term in the manner provided in this section. The state fire marshal and his deputies shall take and subscribe and file in the office of the secretary of state the constitutional oath within fifteen days from time of notice of their appointment respectively.

§ 351. Deputies. The state fire marshal shall appoint a first deputy fire marshal, who shall receive an annual salary of twenty-five hundred dollars, and a second deputy fire marshal who shall receive an annual salary of two thousand dollars. Each deputy shall also be paid his actual and necessary expenses incurred in the performance of the duties of his office. The state fire marshal shall also appoint such other clerks and assistants as shall be needed in the performance of the duties of his office. In case of the absence of the state fire marshal, or his inability from any cause to discharge the duties of his office, such duties shall devolve upon the first deputy state fire marshal; and in case of the

absence of the state fire marshal and the first deputy state fire marshal, or their inability from any cause to discharge the duties and powers of their office, such duties and powers shall devolve upon the second deputy state fire marshal.

§ 352. Assistant officers. All municipal fire marshals in those municipalities having such officers, and, where no such officer exists, the chief of the fire department of every incorporated city or village in which a fire department is established, the president or like senior officer of each incorporated village in which no fire department exists, and the clerk of each organized town without the limits of any incorporated village or city, shall be, by virtue of such office so held by them, assistants to the state fire marshal and subject to the duties and obligations imposed by this article and shall be subject to the direction of the state fire marshal in the execution of the provisions hereof. Immediately upon taking office the state fire marshal shall prepare instructions to the assistants designated herein and form for their use in the reports required by this article and cause them to be printed and sent, together with a copy of this article to each such officer located in this state.

§ 353. Duties of the assistants to the state fire marshal to investigate the cause and origin of all fires. The assistants to the state fire marshal as defined in the preceding section shall investigate the cause, origin and circumstances of every fire occurring in any city, village or town in this state by which property has been destroyed or damaged, and so far as it is possible, determine whether the fire was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of such fire by the assistant in whose territory such fire has occurred, and if it appears to the officer making such investigation that such fire is of suspicious origin, the state fire marshal shall be immediately notified of such fact. Every fire occurring in this state shall be reported in writing to the state fire marshal within thirty days after the occurrence of the same by the officer designated in section three hundred and fifty-two of this article in whose jurisdiction such fire has occurred; such report shall be in the form prescribed by the state fire marshal and shall contain a statement of all facts relating to the cause and origin of such fire that

can be ascertained, the extent of damage thereof and the insurance upon such property, and such other information as may be required.

§ 354. Duties of the state fire marshal and assistants to inspect property. The state fire marshal, his deputies or assistants, upon the complaint of any person or whenever he or they shall deem it necessary shall inspect all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure which, for want of repairs or by reason of age or dilapidated condition or for any other cause, is especially liable to fire and which is so situated as to endanger other property, and whenever such officer shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such buildings he or they shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings. If such order is made by any deputy or assistant to the state fire marshal such owner or occupant may, within twenty-fours, appeal to the state fire marshal, who shall, within ten days, review such order and file his decision thereon, and unless by his authority the order is revoked or modified it shall remain in full force and be obeyed by such owner or occupant.

Any owner or occupant failing to comply with such order within ten days after said appeal shall have been determined, or, if no appeal is taken, then within ten days after the service of the said order, shall be liable to a penalty of fifty dollars for each day's neglect thereafter. The service of any such order shall be made upon the occupant of the premises to whom it is directed by either delivering a true copy of same to such occupant personally or by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises by affixing a copy thereof in a conspicuous place on the door to the entrance of said premises; whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a true copy of said order, or, if such owner is absent from the jurisdiction of the officer making the order, by mailing such copy to the owner's last known post office address.

The penalty herein provided may be recovered in an action brought in any court of the county where such property is located, in the name of the people of the state, under the direction of the state fire marshal or any of his assistants herein designated, by the legally constituted law officer of the city, village or town where such property is located or by an attorney specially designated therefor by the attorney general.

§ 356. Powers of state fire marshal, deputies and assistants. The state fire marshal or his deputies may, in addition to the investigation made by any of his assistants, at any time investigate as to the origin or circumstances of any fire occurring in this state. The state fire marshal, his deputies and assistants shall have the power to summon witnesses and compel them to attend before them, or either of them, and to testify in relation to any matter which is by the provisions of this article a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent or necessary to the inquiry, and shall have the power to administer oaths and affirmations to any person appearing as a witness before them; such examination may be public or private as the officers conducting the investigation may determine.

No person shall be excused from attending before the said fire marshal or any of his deputies or assistants when summoned so to attend, nor, when ordered so to do, shall they be excused from testifying or producing any books, papers or documents before such officer upon any investigation, proceeding or inquiry instituted under the provisions of this article, upon the ground or for the reason that the testimony or the evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding; if, after any such examination of witness or any investigation, the state fire marshal or any of his deputies or assistants is of the opinion that the facts in relation to such fire indicate that a crime has been committed, he shall present the testimony taken on such

examination, together with any other data in his possession to the district attorney of the proper county, with the request that he institute such criminal proceedings as such testimony or data may warrant.

The state fire marshal or his deputies or any of his assistants may at all reasonable hours enter any building or premises within his jurisdiction for the purpose of making an inspection which, under the provisions of this article, he or they may deem necessary to be made.

§ 356. Records. The state fire marshal shall keep in his office a record of all fires occurring in this state and of all the facts concerning the same, including statistics as to the extent of such fires and the damage caused thereby, and whether such losses were covered by insurance, and, if so, in what amount. Such record shall be made daily from the reports made to him by his assistants under the provisions of this article. All such records shall be public, except any testimony taken in an investigation under the provisions of this article which the state fire marshal in his discretion may withhold from the public.

§ 357. Annual report. The state fire marshal shall annually, on or before the fifteenth day of February, transmit to the legislature a full report of his proceedings under this article and such statistics as he may wish to include therein; he shall also recommend any amendments to the law which in his judgment shall be desirable.

§ 358. Witnesses. Any witness who refuses to obey a summons of the state fire marshal, his deputies or assistants, or who refuses to be sworn or to testify, or who disobeys any lawful order of the state fire marshal, his deputies or assistants in relation to any investigation instituted by him or them, or who fails or refuses to produce any book, paper or document touching any matter under investigation or examination, or who is guilty of any contemptuous act after being summoned to appear before him, or either of them, to give testimony in relation to any matter or subject under examination or investigation as aforesaid, may be punished for contempt of court.

§ 359. Duties of district attorney. The district attorney of any county upon request of the state fire marshal, his deputies or

assistants, shall assist such officers upon an investigation of any fire which, in their opinion, is of suspicious origin.

§ 360. Compensation of assistants. Except in cities having over seventy-five thousand inhabitants, all assistants of the state fire marshal not receiving a salary from the state of New York shall receive, upon the audit of the state fire marshal, fifty cents for each report of each separate fire reported to the state fire marshal under the provisions of this article, and in addition there shall be paid to the chiefs of the fire departments, or to the president or like senior officer of each incorporated village in which no paid fire department exists, or to the town clerk of each organized town without the limits of an incorporated village or city, whose duty it shall have been to make and who actually shall have made the investigation, the sum of fifteen cents for each mile traveled to the place of fire, and in the discretion of the state fire marshal, where an investigation has been had a sum not to exceed two dollars for each day's service spent in such investigation. In cities having upwards of seventy-five thousand inhabitants the sum of twenty-five cents for each report made and filed shall be paid in like manner to the officer making and filing the same.

§ 361. Penalties. All penalties or forfeitures collected under the provisions of this article shall be paid into the treasury of the state of New York.

§ 2. This act shall take effect immediately.

PROCEEDINGS.

FIRST PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, *September 7, 1910* — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman.*
HON. ALEXANDER BROUGH, *Vice-Chairman.*
HON. VICTOR M. ALLEN,
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel.*
ALFRED HURRELL, ESQ., { *Assistant Counsel.*
ISIDOR J. KRESEL, ESQ., }

MR. E. W. MOSES, *Secretary.*
MR. CHARLES R. HOTALING, *Sergeant-at-Arms.*
MR. GEORGE M. SHOTWELL, *Official Stenographer.*

Chairman MERRITT: The Committee will be in order. The Clerk will read the resolution under which the Committee sits.

The SECRETARY: Resolved (if the Assembly concur), That a joint committee of three Senators, to be appointed by the President of the Senate, and five Members of Assembly, to be appointed by the Speaker of the Assembly, is hereby constituted and ap-

pointed a legislative committee to investigate as speedily as possible all corruption and corrupt practices shown to exist by the evidence in the recent investigation had before the Senate of the State of New York; all matters indicating corrupt practices in connection with legislation which have developed in the recent investigation conducted by the Superintendent of Insurance; the business methods, operation, management, supervision and control of all insurance companies other than those doing life insurance business, including fire insurance, exchanges, and State and local boards of fire underwriters, and the relation of such companies, exchanges and boards with legislation, including industrial life insurance; any specific charge, verified upon knowledge of corrupt practices or official misconduct in connection with legislation or the Legislature or with any matter or proceeding before any State department, board, body or officer; and any other matters pertaining to the conduct of the business of the State and its officers which in the judgment of the committee warrants investigation, to the end that such remedial legislation may be enacted or change of method in the conduct of public business be adopted as will prevent a recurrence of any abuses or evils disclosed.

No charge of official misconduct against any candidate for nomination or election to an elective State office shall be received after the first day of September, 1910.

Said committee shall make a report of its proceedings, together with its recommendations, to the Legislature on or before the fifteenth day of January, 1911.

The committee shall elect its chairman and vice-chairman. It shall have power to compel the attendance of witnesses and the production of books and papers, to employ counsel, stenographers, and all necessary clerical assistants, to sit anywhere in the State of New York, and shall have all other powers usual or necessary in cases of legislative committees, including the adoption of rules for the conduct of its proceedings. Any person charged with official misconduct shall be entitled to be represented by counsel and to subpoena and examine and cross-examine witnesses. The actual and necessary expense of the committee in carrying out the provisions of this resolution not to exceed the sum of fifty thousand dollars (\$50,000) shall be paid from the funds appro-

priated by the Legislature for the contingent expenses upon the certificate of the chairman and vice-chairman of said committee.

Chairman MERRITT: The Clerk will note the appearance of counsel, M. Linn Bruce, and Mr. Alfred Hurrell and Mr. Isidor J. Kresel as assistant counsel.

Judge, are you ready to proceed?

Judge BRUCE: We are ready to proceed.

Chairman MERRITT: Go ahead.

Judge BRUCE: I will call Mr. John Auen, Jr.

JOHN AUEN, JR., called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside? A. 580 East 137th street.

Q. What is your business? A. I am bookkeeper for the Assets Realization Company, and also for Mr. McKennan, the shareholder agent for the New Amsterdam Bank.

Q. You are bookkeeper for James W. McKennan, the shareholder agent for the New Amsterdam National Bank? A. Yes, sir. That is John W.

Q. This bank went into liquidation, did it not? A. Yes, sir.

Q. When? A. January, 1908.

Q. Voluntary or involuntary? A. Voluntary.

Q. The depositors were paid off, were they not? A. Yes, sir.

Q. And a shareholders' committee was formed, was it not, to realize on the assets? A. Yes, sir.

Q. And Mr. McKennan is the shareholders' agent? A. Yes, sir.

Q. Where are the books and papers of the bank? A. They are stored with the Commercial Safe Deposit Company.

Q. Mr. McKennan was subpoenaed, was he not, to produce the account of Mr. H. H. Vreeland there for the year 1900? A. Yes, sir.

Q. And is this the copy of the subpoena served upon you? A. Yes, sir, it is.

Q. Have you produced that account? A. I have not produced it in full, no.

Q. You have produced it from May 24th, 1900? A. Yes, sir.

Q. Why have you not produced a copy of the account prior to May 24th? A. I have been unable to find the ledger of the bank.

Q. Have you the ledgers for the year 1899, and years prior to that? A. Yes, sir.

Q. And you have the ledgers for the year 1900 after May 24th? A. Yes, sir.

Q. Have you made a search for the ledger that contains this account from the first of January, 1900, to May 24th, 1900?

A. I have.

Q. Where have you searched? A. I have searched where the books are kept, in the Safe Deposit Company vault.

Q. Have you searched in the office of the shareholders' agent? A. There are no books there of the bank's — no ledgers.

Q. The ledger which was lost strangely enough is the identical ledger that we wish? A. Yes, sir.

Q. Will you please go back and continue your search, and state to Mr. McKennan that the Committee is very anxious to have a copy of this account from January 1st, 1900, to May 24th, and ask Mr. McKennan to be here at 2 o'clock? A. Yes, sir.

G. TRACY ROGERS called.

MR. JOHN B. STANCHFIELD: If the Committee please, I would like to be heard for a moment.

Judge BRUCE: For what purpose?

MR. STANCHFIELD: I am about to state to the Committee the purpose of my appearance here.

Judge BRUCE: Gentlemen, if you please, I object to any statement going on the record of counsel. There are no appearances here —

MR. STANCHFIELD: Certainly, Mr. Chairman, no objection will lie until I have stated my appearance — or what I desire to present, and then, if I don't come within the lines of the resolution, it would be up to this Committee to act. Certainly I have the right to state the parties for whom I desire to appear.

Chairman MERRITT: Mr. Stanchfield, the rule has been that the appearance of counsel might be noted.

Mr. STANCHFIELD: That is what I was about to say.

Chairman MERRITT: But it has never been the rule that counsel could take part in the examination.

Mr. STANCHFIELD: That question does not now arise, Mr. Chairman.

Chairman MERRITT: Do you desire your appearance to be noted?

Mr. STANCHFIELD: At the present moment I wish to state the appearance of Mr. Charles A. Collin in association with myself, appearing on this hearing before this Committee, for ex-Senator Louis F. Goodsell, and for the present witness, Mr. G. Tracy Rogers. That is all the statement that I desire to make at present.

Judge BRUCE: My objection, Mr. Chairman, was because the Chairman of the Committee had already stated that no appearance of counsel would be noted; that the presence of counsel might be noted, but that there would be no formal appearance of counsel.

Mr. STANCHFIELD: The resolution, if the Chairman please, upon its face, as I caught its reading — and in fact from the courtesy of Judge Bruce I have a copy of it — provides that anyone charged with official misconduct has the absolute right to appear by counsel, to cross-examine witnesses and to subpoena witnesses. Now almost upon the face of the resolution ex-Senator Goodsell is charged with official misconduct, and that question will arise later. But I am making this as an answer to what Judge Bruce suggests.

Chairman MERRITT: The position of this Committee is this, that the Committee will not permit any formal appearance of counsel for the purpose of participating in the proceeding, except in the case of a person against whom a specific charge of misconduct may be filed, but the presence of counsel may be noted as a matter of courtesy. Now that has been the uniform rule.

Mr. STANCHFIELD: Well, the resolution —

Judge BRUCE: There has been no specific charge filed with the Committee against ex-Senator Goodsell or against the witness on the stand.

Mr. STANCHFIELD: "Any person" — that is the language, that any person charged with official misconduct shall be entitled

to be represented by counsel, and to subpoena and examine and cross-examine witnesses. That was the sentence to which I have reference.

Chairman MERRITT: That was intended to apply to those charges that were provided for which might be filed upon knowledge — specific charges of misconduct.

Mr. STANCHFIELD: That question is not up at the present moment.

Chairman MERRITT: No. We will note your appearance.

G. TRACY ROGERS, called as a witness, being duly sworn, testified as follows:

Direct-examination by Judge BRUCE:

Q. Where do you reside? A. Binghamton, New York.

Q. And what is your business? A. I am interested in public service corporations at the present time; interested in the Rutland Railway Light and Power.

Q. What is your connection with that company? A. President.

Q. How long have you been president? A. For four years.

Q. Have you an office at Rutland? A. I have. Spend most of my time there. The Fair Haven Electric Company.

Q. What is your connection with that company? A. The Rutland Company owns it.

Q. Have you an office at Fair Haven? A. No. The official work of the company is done in Rutland. I am president of the Binghamton Railway Company.

Q. Do you have an office in Binghamton? A. I have.

Q. Where? A. On State street, some number — I don't remember. The Waverley Electric Company.

Q. What is your connection with that company? A. President. The Elmira and Corning Railroad.

Q. Have you any connection with that company? A. I am president. Do you want others?

Q. Yes. A. The Endicott Line Company.

Q. What is your connection with that company? A. President. The Binghamton Industrial Association.

Q. And what is that, Mr. Rogers, an association for developing the industries of Binghamton? A. No. It was the Binghamton Industrial Fair — annual fair.

Q. And what is your connection with that? A. I can't quite explain it, except that it was organized a number of years ago and made a failure, and I took hold of it individually, and financed it, and then I turned it over to the Binghamton Railroad Company.

Q. What other companies? A. Really, I don't remember any more.

Q. Do you remember any companies that you have been interested in, say during the year 1909, other than those you have mentioned? A. Yes, two railroads in Buffalo.

Q. What were their names? A. One was the Buffalo-Hamburg and East Aurora, I think.

Q. What was your connection with that? A. I owned it, that is, perhaps, most of that. I was interested in the Gardner, Ebenezer and East Aurora Railroad.

Q. You are president of that also? A. Yes, sir. That was consolidated into the Buffalo-Southern Railway. I was president of that. I disposed of most of my interest in that road. I was connected with and part owner in the Corning and Painted Post — I was director in that road. I was president and owner of the Waverly Electric Light Company. I was also president of the Sayre Electric Company. Connected with the Hudson Valley.

Q. What was your connection with the Hudson Valley? A. I was a director and on the executive committee. I may have skipped some.

Q. Do you recall any other companies, Public Service companies that you have been connected with since 1900, say January 1st, 1900? A. As a director?

Q. Either as a director — A. I was connected with the Hudson and Manhattan.

Q. What was that company? A. The tunnel company here in New York.

Q. Can you think of any other companies? A. The Rutland companies, four or five of them were consolidated into one. You don't care anything about that?

Q. No. A. Well, they were consolidated. And do you care about the subsidiary companies forming the Binghamton company?

Q. No. Do you recall any other company that you have been connected with since 1900? A. I do not at this time, that occur to me.

Q. Give me the names of those subsidiary companies that go to make up the Rutland company? A. The People's Gaslight Company — no, I may be wrong in the exact names of these companies, when I bought the companies they were afterwards consolidated into the present company, the Rutland Street Railroad Company, the Chittenden Power Company — Chittenden Development Company — I don't know the name of that — the Rutland Electric Light Company — it was the electric light company of Rutland. They were consolidated into the Rutland Electric light and Power Company.

Q. When did this consolidation take place? A. The consolidation between the Chittenden Company and the street railroad, and the People's Gas, took place some four years ago, I can't recall now, and subsequent to that we consolidated the electric light company. I can't remember dates.

Q. Were you ever an officer of the Street Railway Association of the State of New York? A. Yes, sir.

Q. When did you first become connected with that association? A. I think I was elected vice-president at Rochester in 1893 or 1894. It is a matter of record.

Q. Were you an officer or director of it prior to that time? A. If I had the date right I was not.

Q. You were first president in 1893 or 1894? A. At Rochester I was elected — I don't know.

Q. That was your first connection with it? A. Yes, sir.

Q. Its president was Daniel B. Hasbrouck? A. Yes, sir.

Q. And the second vice-president was John H. Moffit, general manager, Syracuse Street Railroad Company, Syracuse? A. Yes, sir, and I was first vice-president.

Q. The secretary and treasurer was William J. Richardson, secretary and treasurer, Atlantic Avenue Railroad Company, Brooklyn? A. I don't remember; it is a matter of record.

Q. What was your connection with that company in 1894 and 1895, do you remember — that is, the next year. A. The next year I was elected president.

Q. Do you remember who the first vice-president was? A. I do not.

Q. It was John H. Moffitt, was it not? A. You have the record there, I cannot remember.

Q. And the second vice-president was William W. Cole, general manager West Side Railroad Company, Elmira, was it not? A. I will simply state that the records are complete.

Q. Hold them in your hand, please, and that will enable me to get it on the record in this proceeding. The second vice-president was William W. Cole, was it not? A. It must be from the records — I can't remember those things.

Q. The secretary and treasurer in 1894-95 was William J. Richardson, director of the Atlantic Railroad Company, Brooklyn, was it not? A. Yes, sir.

Q. And the executive committee consisted of Daniel B. Hasbrouck, vice-president Metropolitan Street Railway Company, New York; John N. Beckley, president Rochester Railway Company, Rochester, and Daniel F. Lewis, president Brooklyn City Railroad Company, Brooklyn. Is that correct? A. That is what the records show, yes, sir.

Q. For the year 1895-1896, you were president, were you not, that year? A. Yes, sir.

Q. And you were also president at that time of the Binghamton Railroad Company? A. Yes, sir.

Q. The first vice-president was William W. Cole, general manager West Side Railroad Company, Elmira? A. Yes, sir.

Q. The second vice-president was John H. Moffitt, general manager Syracuse Street Railroad Company, Syracuse? A. Yes, sir.

Q. The secretary and treasurer was Benjamin Frick, secretary and treasurer, Atlantic Avenue Railroad Company, Brooklyn. Is that correct? A. It is so recorded here.

Q. You have no doubt that the minutes of the company are correct? A. Oh, no, those minutes are correct.

Q. That year the executive committee consisted of Herbert H.

Vreeland, president Metropolitan Street Railway Company, New York; John W. McNamara, treasurer and general manager the Albany Railway, Albany; Henry M. Watson, President Buffalo Railway Company, Buffalo. Is that correct? A. Yes, sir

Q. For the year 1896-97 you were president again, were you not? A. Yes, sir.

Q. The first vice-president was W. Caryl Ely, president Buffalo and Niagara Falls Electric Railway Company, Niagara Falls, N. Y.? A. Yes, sir.

Q. The second vice-president was John N. Beckley, president and general manager Rochester Railway Company, Rochester? A. Yes, sir.

Q. The secretary and treasurer was Henry A. Robinson, vice-president Metropolitan Street Railway Company, New York? A. Yes, sir.

Q. The executive committee consisted of — the president and secretary were ex-officio members of the executive committee, were they not? A. I believe so, I was always on the committee as president.

Q. It is so stated, is it not, in your minutes? A. That I do not know.

Q. In addition to the president and secretary, that is yourself and Mr. Robinson, the executive committee was Herbert H. Vreeland, president Metropolitan Street Railway Company, New York; John W. McNamara, treasurer and general manager the Albany Railway, Albany; Henry M. Watson, president Buffalo Railway Company, Buffalo, and Clinton L. Rossiter, president Brooklyn Heights Railroad Company, Brooklyn. Is that correct? A. Yes, sir.

Q. In 1897-98 you were again president? A. Yes, sir.

Q. The first vice-president was again W. Caryl Ely, president Buffalo and Niagara Falls Electric Railway Company, Niagara Falls, New York? A. Yes, sir.

Q. The second vice-president was T. J. Nicholl, vice-president and general manager Rochester Railway Company, Rochester, New York? A. Yes, sir.

Q. The secretary and treasurer was Henry A. Robinson, solicitor Metropolitan Street Railway Company, New York — he

had become at that time solicitor — prior to that time he was vice-president? A. It is so recorded.

Q. The executive committee, in addition to yourself and the secretary, consisted of Herbert H. Vreeland, president Metropolitan Street Railway Company, New York; John W. McNamara, treasurer and general manager the Albany Railway, Albany, and Clinton L. Rossiter, president Brooklyn Heights Railroad Company, Brooklyn. Is that correct, the same as the year previous?

A. Yes, sir.

Q. For the year 1898-99 you were again president? A. Yes, sir.

Q. And Mr. W. Caryl Ely was first vice-president? A. Yes, sir.

Q. And Mr. Albert L. Johnson, president Nassau Electric Railroad Company, Brooklyn, was second vice-president? A. That is correct.

Q. The secretary and treasurer was Henry A. Robinson, solicitor of the Metropolitan Street Railway Company, New York?

A. Yes, sir.

Q. And the executive committee was the same as the year before? A. Yes, sir, the same.

Q. That is in addition to the president and secretary? A. Yes, sir.

Q. In the year 1899-1900 you were again president? A. Yes, sir.

Q. The first vice-president that year was Charles Cleminshaw, president Troy City Railway Company, Troy, New York? A. Yes, sir.

Q. And the second vice-president was John W. Boyle, president Utica Belt Line Street Railway Company, Utica, New York? A. Yes, sir.

Q. The secretary and treasurer was again Henry A. Robinson, solicitor of the Metropolitan Street Railway Company, New York? A. Yes, sir.

Q. And the executive committee, in addition to the president and secretary, consisted of Mr. Herbert H. Vreeland, Mr. Clinton L. Rossiter, Mr. W. Caryl Ely and Mr. T. J. Nicholl, vice-president of the Rochester Railway Company, Rochester, New York. Is that correct? A. Yes, sir.

Q. In the year 1900-1901 you were again president of the association? A. I was.

Q. The first vice-president was John W. Boyle, president of the Utica Belt Line Street Railway Company? A. Yes, sir.

Q. The second vice-president was Edward G. Connette, general manager Syracuse Rapid Transit Railway Company, Syracuse, New York? A. Yes, sir.

Q. The secretary and treasurer was again Henry A. Robinson, solicitor of the Metropolitan Railway Company, New York? A. Yes, sir.

Q. And the executive committee consisted the same as the year before? A. That is right.

Q. In 1901-02 you were again president, were you not? A. I was.

Q. Mr. Connette was promoted to the first vice-president of the association? A. Yes, sir.

Q. The second vice-president was Addison B. Colvin, president of the Hudson Valley Railway Company, Glens Falls, New York? A. Yes, sir.

Q. The secretary and treasurer was again Henry A. Robinson, solicitor of the Metropolitan Street Railway Company? A. Yes, sir.

Q. And the executive committee, in addition to yourself as president, the secretary, consisted of Herbert H. Vreeland, W. Caryl Elliott, T. J. Nicholl and J. L. Greetsinger, president Brooklyn Rapid Transit Railway Company. Is that correct? A. Yes, sir.

Q. In 1902-03 you were again president of the association? A. I was.

Q. The first vice-president was again Edward G. Connette, and the second vice-president was Addison B. Colvin? A. Yes, sir.

Q. The secretary and treasurer was Henry A. Robinson, and the executive committee consisted as of the year before? A. Yes, sir.

Q. Have you been connected with the association since that time, since 1902-03? A. I am not.

Q. Can you state to me what companies were members of the association during the years that you were president? A. No.

Q. Can you tell me about how many members the association had? A. No.

Q. Were all the companies with which you were connected as officer or director members of the association? A. At the time that I was president?

Q. Yes, during the years you were president. A. I think but one company, the Binghamton company.

Q. The others were not members of the Street Railway Association? A. I was not connected with the other companies at that time.

Q. You were not connected with any other company in 1900-01 other than the Binghamton Street Railway Company? A. I think I was a director of the Hudson Valley company — I can't remember.

Q. Do you recall whether or not in 1900-01 you were an officer or director in any other service corporation than the Hudson Valley and the Binghamton company? A. I am not sure about the Hudson Valley company — I was connected with the Binghamton company.

Q. Do you recall if you were connected with any other company either as officer or director? A. I do not. You mean any other public service company?

Q. Yes. A. I was not.

Q. What was this association? A. The association was an association of all or nearly all the trolley roads in the State.

Q. Including those in New York and Brooklyn? A. Yes, sir.—formed for the purposes of exchanging views — do you want me to go on with these things?

Q. Yes. A. Exchanging views and getting together, presenting papers at the conventions, and studying the necessities caused especially at that time by the change of motive power from horse to electric or mechanical power — it was very essential — it was a radical change — and caused, of course, necessarily a complete change of roadbed, for instance. Is that what you want me to tell?

Q. Yes, I want you to tell me the purposes of the association in all its activities. A. A horse car, of course, needed a light rail. a light roadbed, but an electric car we found from year to year the requirements were even more than for steam railroads. Our rails we found had to be as heavy or heavier, and this as-

sociation made a study of this roadbed, of its construction, what we should do, and how we should do it. Next came the equipment, necessarily changing with the inventor from one electrical machine to another, and it was a question whether we would scrap the old and buy new. All these things were thoroughly discussed at all its convention meetings and among ourselves.

Q. What other topics other than dealing with the betterment of the roads and their improvement, accommodating themselves to changed conditions brought about by inventions and other enterprises, what other activities did the association have? A. The railroads' relations to the public caused by these changes at this time, that was one of the serious matters. The other activity was the legislation that was thought about and presented on account of these changes. My function was to appear — my duty rather, which was expected of me — to appear in Albany before committees, etc.

Q. There was a great mass of legislation, was there not, during 1899, 1900 and 1901, on down to 1905, as long as you were connected with the association, having to do with street surface railway companies? A. There was —

Q. Answer it categorically, whether there was or was not. A. There was.

Q. A great deal of this legislation you, as president, and the members of the association, deemed to be inimical to the best interests of the railway companies — wasn't that true? A. It was.

Q. And some of it you deemed to be for the best interests of the companies? A. We did.

Q. Prior to the formation of the association much of the legislation had its initiative with the independent companies, had it not? That is, separate companies had gotten up bills that they deemed would be for their best interests and introduced them, which other companies felt might be detrimental to their interests, and was it not one of the purposes of the association to see to it that legislation which was introduced should be uniform, and not favorable to one railway company in one part of the State and injurious to another? A. I cannot tell you what was thought before I was president of the association, because it was already

formed, but your statement, I think, is true as to the ideas of the members of this association.

Q. At the time you were an officer of it? A. Yes, sir.

Q. Now it was your duty as president of the association, I take it, as you have stated, to appear in Albany, appear before committees, and by statements before committees, and arguments made, and by conversation with different members of the Legislature to seek to pass legislation, or secure the legislation that you deemed for the best interests of the railway companies, and to defeat railway legislation that you deemed inimical to the best interests of the railway companies? A. I wish to answer that in this way. There was very little affirmative legislation desired, but there were a great many bills that would have made it impossible to have operated our roads. I just recall one in New York. There was a bill introduced there —

Q. Before we go into matters specifically let us keep along general lines and see if I do not correctly state your duties and your activities, Mr. Rogers. During the years when you were an officer and when you were the president of the association, from the time that the Legislature met until it adjourned, it was your duty to keep track of legislation for the street railway companies? A. Yes, sir.

Q. It was your duty to appear when the Legislature was in session, and to endeavor to appear before committees, and by conversation with members to defeat legislation that you considered hostile to the railway companies, or injurious to them?

A. It was my duty to be there, also the attorneys and counsel that we hired, and it was my duty also to call upon members of the association from different parts of the State, to appear before these committees and state to the committee or argue why the bills should be passed or should not be passed. I also had secretaries to give me briefs of those bills. There were as high as 240 bills in one session. I call a bill — a new bill — an amended bill, which needed just as much care as the others.

Q. In the discharge of those duties during the year 1900-01 and down until you ceased to be president of the association, you did attend at Albany and discharge those duties, did you not? A. Before the committee meetings there.

Q. And also in conversations with members of the Legislature and members of the committee? A. Largely before the committees.

Q. There can be no question but that you did converse with members of the committee having these bills in charge and other members of the Legislature in regard to these matters that were pending? A. That is the situation.

Q. You say there was very little affirmative legislation. I presume as to what affirmative legislation there was, you also had the same activities, endeavoring to secure its enactment? A. We did.

Q. Do you recall who was the counsel for the association, starting with the first year that you became president? A. The first counsel that I can recall at the present time was Senator Edmund O'Connor.

Q. You became president in 1894? A. Yes, sir.

Q. Was Senator O'Connor counsel then or had he died at that time? A. Oh no — I cannot tell at this time.

Q. Do you recall when the Senator died? A. No, I do not but I will explain to your satisfaction.

Q. He was the first counsel that you recall? A. He was the first counsel and remained so until I think — it was the year of the Ford Franchise Tax Bill — what year was that?

Q. I think it was in 1898. A. Oh, no. Well, he was counsel until I think in 1892, 1891 or 1892, then I think another man was elected, I don't remember what his name was, for part of the winter, and then Senator Meyer Nussbaum.

Q. He succeeded Senator O'Connor, did he not? A. No, there was another man elected for a part of the year.

Q. Do you remember who succeeded Senator Nussbaum? A. No, I do not.

Q. Do you remember who was counsel for the association for the last year when you were president, say in 1902-03? A. No, sir, ex-Senator Nussbaum I think.

Q. Do you remember about the year 1901-02? A. No, I can't remember.

Q. Those were counsel that had general retainers from the association? A. Yes, sir.

Q. Were other counsel employed by the association? A. In some instances.

Q. Do you recall the names of any? A. No, I don't now.

Q. About how many members did the association have while you were president? A. That I cannot tell you.

Q. If you were to make an estimate what would you say was a reasonably safe estimate? A. I should say there were about four-fifths of the roads in the State. I cannot tell you.

Q. Would that be about 50? A. I cannot tell you.

Q. What were the dues of the members of the association? A. That I would have to refresh my memory on.

Q. You will find it in the by-laws? A. I think it was so much a road.

Q. I will give it to you in just a moment, page 142 of the 27th Annual Meeting Report, 1909, will you just read that, please? A. "The dues of active members shall be as follows: Members whose annual gross receipts from passengers shall be more than \$100,000, shall pay an admission fee of \$25. Members whose annual gross receipts from passengers shall be less than \$100,000 shall pay an admission fee of \$5. An annual assessment shall be levied upon each member of the association upon the following basis:" Do you want me to read all of this?

Q. Yes, please. A. "Members whose annual gross receipts shall be less than \$50,000 shall pay \$10. Members whose annual gross receipts shall be over \$50,000 and less than \$100,000 shall pay \$25. Members whose annual gross receipts are over \$100,000 and less than \$300,000, shall pay \$150. All members whose annual gross receipts are over \$300,000 and less than \$500,000, shall pay \$300. All members whose annual gross receipts are over \$500,000 and less than \$1,000,000, shall pay \$400. All members whose annual gross receipts are \$1,000,000 or over, shall pay \$600."

Q. Did you read that from — A. I have read that from page 142 of the proceedings of 1909.

Q. In addition to the regular members, you also had associate members, did you not? A. That I do not know.

Q. Just look on the same page a little further down under that, subdivision 15, article 15, rather. A. This is some time ago. I have had something in my head since.

Q. I haven't any doubt of it. A. I have tried to answer.

Q. A little further down. A. There have been, from the record. I remember nothing of that incident.

Q. Do you not recall that certain supply houses, houses which furnished or dealt in supplies for street railway companies, were permitted to join as associate members? A. Yes.

Q. And they paid dues of \$25 a year, didn't they? A. Yes. I think so.

Q. And then you had also dues of allied members; who were the allied members? A. What does that mean? You have got me. I don't know what that is.

Q. Were they or were they not street associations outside of the State? A. I think so, now that you have called my memory to it.

Q. And who might have an interest in matters relating to the State of New York? A. I think that is right; they used to come from other States.

Q. And they paid \$15 a year, did they not? A. It is so stated there.

Q. Is it not a fact that the highest number of members that the association ever had was 25; just reflect for a moment? A. I have told you before I could not remember. The members are all given in these books from year to year; we have got a complete history of them.

Q. Do you remember the highest amount of dues that were collected any given year, say when you were president? A. I could not remember that.

Q. Was it as much as \$10,000? A. I think not; not from those

Q. Over \$8,000? A. I do not think it was that much; I could not tell you.

Q. In your judgment, giving an estimate based upon your recollection, it would not be to exceed \$6,000? A. I will have to look and see. This may help me out. There is a complete history of all these dues, and what it is paid for from the beginning, since I was president up to the time — you have got a history of disbursements and dues and everything collected there.

Q. I have no doubt about that, and we no doubt will have

access to them, but for the purpose at present, I simply wanted to get your estimate, that is, to get the dues to be paid up to \$600, those were evidently the companies that would only exist in Buffalo and New York? A. And Brooklyn.

Q. Yes, I was speaking about Greater New York? A. I think those in Brooklyn and New York and Buffalo.

Q. Would pay the \$600? A. Yes, sir.

Q. And that the entire receipts from dues during any year would not exceed much over \$6,000, if any? A. I could not tell you.

Q. Wouldn't that be your recollection? A. I could not tell you, but the books themselves are the best evidence. I think it would be more when I was president than at this time. I cannot recollect. It would be inside of \$10,000, I should guess.

Q. It appears upon page 39 of the report of the 27th annual meeting, that is for the year 1909, that the entire receipts were \$10,463.18; just look at that. A. What year was that?

Q. This is 1909. A. I was not president at that time.

Q. No. I want to inquire whether or not that in any wise refreshes your recollection as to the receipts probably, during the time you were president. A. My judgment would be that it would be about that amount.

Q. That was what I thought. A. Yes, sir.

Q. Who was Herbert H. Vreeland? A. President of the Metropolitan.

Q. And also for many years one of the members of the executive committee of the association? A. Yes, sir.

Q. And you were acquainted with him? A. Yes, sir.

Q. And have been for many years? A. Many years, intimately.

Q. Who was Mr. Henry A. Robinson? A. He was a solicitor.

Q. General solicitor for the Metropolitan Street Railway Company? A. Yes, I believe that was his office.

Q. And for many years secretary and treasurer, and afterwards a member of the executive committee? A. No; except that he was secretary of the association. I don't know whether the secretary would be a member of that committee or not.

Q. Just look at the pamphlet you hold in your hand, for the

years 1901 and 1902, and give me the name of the secretary and treasurer. A. I have named him before.

Q. Mr. Henry A. Robinson? A. Yes, sir.

Q. He was also secretary and treasurer in 1902 — in 1903? A. Yes, sir.

Q. He was also secretary and treasurer in 1901? A. Yes, sir; I have given that before.

Q. During the years that you were president of the company and charged with these activities in connection with legislation which you have enumerated, I take it that you were personally acquainted with the leading members of both the Assembly and Senate? A. With the leading members, yes.

Q. Do you recall who was Chairman of the Committee on Railroads of the Assembly in 1900? A. I don't know whether Mr. Bedell was chairman then or not.

Q. I show you a copy of the Legislative Manual for that year, for the purpose of refreshing your recollection, and ask you who was the Chairman of the Committee on Railroads for the year 1900? A. It is stated in this book that Mr. Bedell was.

Q. And that would accord with your recollection, would it not? A. I think it would; yes; I would have to see that, though, to remember it.

Q. Do you recall who was Chairman of the Committee on Railroads of the Assembly in 1901? A. I think Mr. Bedell was chairman then.

Q. I show you the Legislative Manual for that year, in order to refresh your recollection; I think Mr. Bedell was. A. It is so stated there, yes.

Q. And that would be confirmed by your recollection, would it not? A. It would.

Q. In 1902, do you recall who was Chairman of the Committee on Railroads in the Assembly? A. I think Mr. Bedell was.

Q. And in 1903? A. I do not know whether he continued in 1903 or not.

Q. I show you the Legislative Manual for that year? A. Yes, he was.

Q. And he was also chairman in the year 1904, was he not? A. From that book, yes.

Q. Do you recall who was chairman of the Committee on Railroads in the Assembly in the year 1905; I show you the Legislative Manual of that year? A. I do not recall. From this Manual, it states that Mr. Bedell was.

Q. Now, Mr. Bedell was also a member of the Committee of Rules of the years 1900 to 1905, was he not; in order to refresh your recollection, I call your attention again to the Legislative Manuals of those years. A. You would have to. I can't remember.

Q. It appears from the Legislative Manuals for the years 1900, 1901, 1902, 1903, 1904 and 1905, does it not, that Mr. Bedell was also a member of the Committee on Rules for each of those years? A. It does.

Q. Do you remember whether or not Senator Goodsell was a member of the Committee on Railroads in the Senate in the year 1900? A. I don't remember.

Q. I show you the Legislative Manual for the year 1900, for the purpose of refreshing your recollection? A. It appears from the Manual of that year that he was.

Q. It is also true that he was a member of the Committee on Rules in the Senate for the year 1901, as shown in the Legislative Manual of that year? A. Yes, sir.

Q. Also in the year 1902? A. Yes.

Q. And also the year 1903? A. Yes, sir.

Q. And also in the year 1904? A. Yes, it is so stated.

Q. So stated in the Manual of that year? A. Yes, so stated in that book.

Q. And he was also a member of the Committee on Railroads in the Senate for the year 1905? A. Yes.

Q. As shown by the Legislative Manual of that year? A. Yes, sir.

Q. You were acquainted, of course, with Mr. Bedell? A. Very well.

Q. And also with Ex-Senator Goodsell? A. For years.

Q. Mr. Nixon was Speaker of the Assembly during those years, was he not? A. I think so. Who was Speaker before him?

Q. I don't know. I will have to look and see. A. I cannot

remember the years. It was Mr. Hamilton Fish before him, wasn't it, or Jim O'Grady?

Q. Well, I show you the Legislative Manual for 1900; it appears there, does it not, that S. Frederick Nixon was Speaker in the session of 1899-1900? A. Yes, it does.

Q. I show you the Manual of 1901, it also appears from that, that he was Speaker in 1901? A. Yes, sir.

Q. I show you the Manual for 1902, it also appears from that that Mr. Nixon was Speaker in 1902, does it not? A. It does.

Q. I show you the Manual for 1903, it appears also that he was Speaker in 1903, does it not? A. It does.

Q. I show you the Legislative Manual for 1904, it appears there, does it not, that Mr. S. Frederick Nixon was Speaker in 1904? A. It does.

Q. I also show you the Legislative Manual for 1905, it appears there, does it not, that Mr. S. Frederick Nixon was Speaker in 1905? A. Yes, sir, it does.

Q. You were acquainted with Mr. Nixon also, were you not? A. For years.

Q. For three years? A. No, for years.

Q. You were also acquainted with the President *pro tem.* in the Senate, Ex-Senator Raines? A. Yes, I met him there in Albany.

Q. You knew him personally? A. Oh, I knew him personally. yes, sir.

Q. Also with Ex-Senator Goodsell? A. Yes, sir.

Q. You had known Senator Goodsell a number of years? A. Yes, a number of years.

Q. Also with Senator Malby? A. Yes, sir.

Q. And the other leading Senators in the Senate? A. Yes, sir.

Q. And also the leading members in the Lower House? A. yes, sir.

Q. You were connected at one time, were you not, as special partner in the brokerage firm of Ellingwood & Cunningham? A. I was.

Q. Where were their offices? A. Wall street.

Q. Do you recall the number? A. Forty-one, I think.

Q. Of whom did the firm consist? A. Originally of Mr. C. I. Ellingwood and James W. Cunningham and myself as special.

Q. You were acquainted with Mr. Ellingwood and Mr. Cunningham prior to the time you went in as special partner, were you not? A. Oh, yes.

Q. And you became a special partner, do you remember what year? A. I cannot.

Q. You became special partner in 1899, and continued until January 1st, 1905, did you not? A. I do not remember. If you have the statement there, I suppose it is correct.

Q. Mr. Ellingwood drew out of the firm prior to the time that you became separated from the firm? A. He did, yes.

Q. Prior to the year you went out? A. I don't remember that. I went out the first of January, 1905, I think.

Q. Your memory having been refreshed since I inquired a short time ago, when you became special partner in, was in January, 1900, was it not, that you went into the firm? A. Yes, that is right, January 8th, 1900.

Q. And you left the firm on January 1st, 1905? A. I believe that is it.

Q. And Mr. Ellingwood left the firm, do you remember what year? A. I do not.

Q. 1903, was it not, two years before you did? A. I could not state when it was; it was prior to the time I did, a year or two.

Q. The firm failed on February 15th, 1905, about six weeks after you severed your connection, did it not? A. I believe so.

Q. Filed a petition in bankruptcy? A. I don't remember that.

Q. Do you recall? A. No, I do not.

Q. Don't you recall it filed a petition in bankruptcy and that prior to the adjudication on the petition, it made a settlement with its creditors? A. You will have to have better evidence than me.

Q. They did not go through bankruptcy; a petition in bankruptcy was filed in 1905; later they made a settlement with their creditors, and the petition was withdrawn; is that not in accordance with your recollection? A. Yes, sir.

Q. And Mr. Ellingwood went out of the firm in 1902, in October; doesn't that accord with your recollection? A. I could not remember.

Q. Now, did you not have an account or accounts with Ellingwood & Cunningham prior to the time you became connected with it as special partner? A. I did.

Q. And you also continued to have accounts, did you not, after you had become connected as special partner? A. I did.

Q. A number of accounts? A. I did.

Q. See if I read them correctly? A. I could not remember them.

Q. You had a G. T. Rogers special account running from January 14th, 1902, until April 30th, 1902? A. I never looked in these books to see my account, and I have not seen them since or before. The books are the best evidence of what I have got in there. I could not give you any enlightenment on it.

Q. I haven't any doubt of it. A. I have never seen the books. I want to state, before when I was in the firm, I do not remember ever looking in the books in my life.

Q. See if you recall these accounts, whether you had them or not; of course the books themselves are the best evidence. You recall having an account "G. T. Rogers, Special;" do you recall that? A. Is it there?

Q. No, I am just inquiring if you recall; I will make proof from the books, but I want to just test your recollection; do you recall having an account, "Rogers & R.?" A. Yes.

Q. Who was the R.? A. That was Rogers & Robinson.

Q. Henry A. Robinson, was it not? A. I think it was, yes, sir.

Q. Do you recall having an account, "Rogers & Green?" A. Yes.

Q. Who was Green? A. Senator George E. Green.

Q. Of Binghamton? A. Started years before he was in the Senate. Then I had an account that — to find out if my memory is right,— I had an account with Green, Cunningham, Bedell and myself.

Q. Do you remember an account "Rogers & J.?" A. Yes.

Q. Who was J.? A. May I have a word here. A great

many times I would buy a hundred or five hundred shares of stock before luncheon, or something else, and if we made the money to pay for the lunch, we were lucky.

Q. I don't doubt that. A. So many accounts I cannot remember.

Q. You don't remember who the "J." was? A. I cannot, now.

Q. Did you have an account "Rogers & Speyer?" A. I think so.

Q. Who was Speyer? A. Mr. Speyer, a friend of mine in Glens Falls.

Q. Did you have an account as assignee for F. S. Ross? A. It must have been simply a deposit account if I had.

Q. Who was Mr. Ross? A. A party in Binghamton. It must have been some money left in New York temporarily.

Q. Did you have an account "Rogers & E.?" A. It must have been one of those other accounts.

Q. Do you recall who "E." was? A. No.

Q. Did you have an account "Rogers & Wilson?" A. Yes.

Q. Who was Wilson? A. I think Mr. Wilson was a friend of mine in New York here.

Q. Do you recall having an account "Rogers & Green" special? A. Well, I think that was in connection with the Philadelphia stock of some kind.

Q. That was also Ex-Senator Green, was it not? A. Yes, sir.

Q. Did you have an account "Rogers & C.?" A. I think it must have been Mr. Cunningham and myself, if I give a guess on it. It would have to be a guess.

Q. Did you have an account, "Rogers, Bedell & Green?" A. Yes. I stated before — No, that account, if I remember right there were four of us in that account.

Q. Who else was in? A. I think Mr. Cunningham.

Q. Then you had "Rogers & Green," and also one "Rogers, Bedell, Green & Cunningham?" A. I would not be at all surprised. I had enough.

Q. Now, do you remember any customers whom you introduced personally to Ellingwood & Cunningham? I presume as a special partner, you endeavored to bring in all the customers you could? A. Naturally I would, being special partner and not having any

active part in the business, what did they have me there for except my capital?

Q. Do you remember any you introduced? A. I cannot to-day.

Q. Do you remember any men connected with the Legislature whom you introduced? A. All I could get to come down there, if they were speculating, to do their speculating there.

Q. Do you remember introducing Mr. Bedell? A. I think so.

Q. And Mr. Goodsell? A. I think so.

Q. And Mr. Dixon? A. I think so.

Q. And Mr. Archie Baxter? A. I think Mr. Baxter came there through someone else, I don't remember.

Q. Mr. Baxter's son was later connected with the firm, was he not? A. Yes, sir.

Q. He possibly came through his son? A. I think he did.

Q. Do you remember introducing Senator Malby? A. Yes, sir.

Q. Do you remember introducing Senator Raines? A. No, I do not.

Q. Do you remember introducing any other members of the Legislature? A. I am all at sea about it. I do not remember who I introduced there, but I did what I could in that direction.

Q. I have no doubt about it. That was perfectly right. Now, was either Mr. Ellingwood or Mr. Cunningham interested with you in any other business enterprise or enterprises? A. Oh, nothing of any importance at all.

Q. Name those, whether they were important or not. A. I think that Mr. Cunningham may have had four or five shares in the Binghamton Railroad stock somewhere; I don't remember.

Q. Do you remember any other companies that either of them were interested in, that you were interested in. A. You don't care about since that time?

Q. Say 1900 to 1905? A. I think not, none whatever.

Q. Mr. Rogers, did you know a company known as the New York Electric Vehicle and Transportation Company? A. At what time?

Q. At any time when you were president of the company. A. President of what company?

Q. Of the association, rather. A. I did.

Q. Did you know of such a company in 1900? A. Well,

wouldn't it be best for me to tell when I first became acquainted with it?

Q. Yes, I will adopt your suggestion and make that my question. A. The first time I knew of such a company was when I received a request from someone in Albany to buy 100 shares of the stock, and I had to write the name of the company down because I did not know what it was.

Q. Do you recall when that was? A. Well, if you have got the books, and you can show when I bought 100 shares for James T. Rogers and put up \$500 for myself,— it ought to have my name or the fact — you will find the date — the night before is the first I knew that such a thing existed.

Q. That was prior to 1900, wasn't it? A. That I cannot tell you.

Q. Do you recall whether or not that was prior to 1900? A. I never knew anything about the thing until that time. You will find an entry there somewhere, because I remember that coming out in the newspapers. I have not seen Mr. Rogers' account; never have seen it in my life, only I saw it in the newspaper; that is the way I recollect it.

Q. Will you search your memory carefully and see in answer to this question, were you not aware of a bill which was introduced in the Legislature in the Senate on March 16th, 1900 by Senator Goodsell, entitled "An Act to Amend the Transportation Corporation Law by the Addition thereto of a Section in Relation to Existing Routes and Extensions," which was a bill affecting the interests of the New York Transportation Company? A. I must answer that this way, that I did not know anything about that bill, or anything about that company until the time I told you, and I was told then to buy the stock. Now, one minute. I never paid any attention whatsoever to any legislation beyond that affecting all the streets, railroads in the State, not any individual road nor any transportation company. I knew nothing about that company.

Q. This bill was introduced by Senator Goodsell on the 16th of March, 1900, and was read for the first time and by unanimous consent was also read the second time; and on motion of Senator Goodsell and by unanimous consent, the rules were suspended,

and the bill was ordered to a third reading, ordered printed and referred to the Committee on Miscellaneous Corporations, retaining its place on the order of third reading. Do you recall the introduction of the bill? A. I recall nothing about it; knew nothing about it.

Q. Now, on March 21st, a bill having been introduced on Friday, the 16th, the Legislature having adjourned over until Monday, which was the 19th, on Wednesday the 21st, Senator Coggeshall, from the Committee on Miscellaneous Corporations, to which the bill was referred, the bill introduced by Senator Goodsell, Introductory Number 938, and whose title I have read, reported in favor of the passage of the same with some amendments, which report was agreed to and the bill restored to its place on order of third reading; do you recall that proceeding in the Legislature? A. I have answered you, I know nothing about the proposition or the bill or the legislation in any way, shape or manner. I did not even know there was such a bill introduced; I know nothing about it. I have no interest whatever in any way, shape or manner, except later on I bought some stock in it and got caught.

Q. Then you have answered my question? A. I know nothing whatever about it and never did; I did not know such a thing in the Legislature.

Q. On Thursday, March 29th, Mr. Marshall, from the Committee on Printed and Engrossed Bills, reported as correctly printed the bill introduced by Senator Goodsell, whose title I have read, and on the same day the bill was passed. Do you recall that? Answer. A. Now, Governor —

Q. Now, we will make very great progress if you will just say yes or no? A. Excuse me, it is hardly fair to put all that on me, when I don't know anything about it.

Q. I am not attempting to put that on you. I simply asked you if you recalled that? A. I do not, in no way, shape or manner. I am glad to have that question asked.

Q. Now, the bill was passed on the 29th of March. Now, on Friday, the 30th of March, the Senate sent a bill for conference to the Assembly, where it was read for the first time and referred to the Committee on Judiciary. Do you recall that proceeding in the Assembly? A. No, sir, I know nothing about it.

Q. On Thursday, April 5th, Mr. Speaker, from the Committee on Rules, the Committee on Rules then having taken charge — I presume you are acquainted with the operations of the Assembly? A. Oh, I am familiar with that.

Q. Well, you know, you are familiar with the fact that ten days from the date agreed upon for adjournment the Committee on Rules take charge of the calendar? A. I am familiar with that.

Q. Well, this was within ten days. Thursday, April 5, 1900, Mr. Speaker, from the Committee on Rules, to which was referred the Senate Bill, whose title I have read, bill introduced by Senator Goodsell, reported in favor of the passage of the same without amendment, and that the same be made special orders on second and third reading immediately, which report was agreed to, and said bill ordered, made a special order on second and third reading immediately. On motion of Mr. Bedell, said bill was read the second time and ordered to a third reading. Said bill was then read the third time, having been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage. Mr. Speaker put the question whether the house would agree to the final passage of said bill, and it was determined in the affirmative. Do you recall that proceeding in the Assembly? A. No, sir, knew nothing about it.

Q. Now immediately Mr. J. J. Fitzgerald moved to reconsider the vote by which the bill was passed, and the Speaker put the question whether the house would agree to the reconsideration of the vote on the final passage of the bill, and it was determined in the negative, a majority of all the members not voting in favor thereof. Do you recall that proceeding? A. I do not.

Q. The Clerk then ordered the return of the said bill to the Senate with a message that the Assembly have concurred in the passage. Do you recall that proceeding? A. I know nothing about it.

Q. Now, in the Senate, on Monday, April 2nd, it appears from the record that the Assembly returned this bill, and the Clerk ordered that the message that I have read, and the Clerk of the Senate ordered to deliver the bill to the Governor. You don't recall that? A. No, sir.

Q. The bill passed to the Governor on April 2nd. Now, do you recall that it was on April 19th that you bought the 100 shares of Transportation for G. T. Rogers at 11 1/4, and made a deposit of margins to his account of \$500? A. I don't remember the date. I know that I did it.

Q. The deposit having been made on the 3rd of May, do you recall that? A. I know when I did it.

Q. Now the Governor signed the bill April 24th, 1900, and it became chapter 657, of the Laws of 1900, the Legislature having adjourned on Friday, April 6th, 1900. Do you recall that fact? A. I do not.

Q. Do you recall the fact, Mr. Rogers of the bill pending as a thirty day bill before the Governor for executive action, the Legislature having adjourned on the 6th, and the bill having been signed on the 25th, do you recall that? A. I do not.

Q. You don't recall it? A. I have no interest in it.

Q. Well, I did not know but what perhaps, after having purchased the 100 shares for Mr. Rogers on the 19th, that you might recall that the bill was pending before the Governor? A. I didn't. I think I purchased something for myself somewhere —

Q. Do you recall when Mr. Rogers asked you to buy these 100 shares of Transportation, whether he said anything about such a bill pending in the Legislature or before the Governor? A. He simply said that he had a tip to buy the stock.

Q. Did he explain what he meant by the tip, not saying what the tip was? A. No.

Q. Are you quite certain about that? A. Oh, yes.

Q. Did he say anything about this bill, that this bill was then pending before the Governor? A. I don't remember that part at all.

Q. Just a moment? A. I know you are trying to refresh my memory, but it does not refresh my memory on that point. I want to answer you, Governor Bruce.

Q. Now, do you remember or recall having any talk with any other person than Mr. Rogers in regard to New York Transportation at that time? A. Well, I can't tell at what time.

Q. Well, I will say in April, 1900? A. I can remember this:— Governor, may I explain all about the New York Transportation, as far as I know?

Q. No, I don't want that just now. A. All right.

Q. Your statement to me is that the first time you ever heard of New York Transportation was when Mr. Rogers told you that he had a tip, and asked you to buy 100 shares? A. That is the first I remember.

Q. Now it appears from the records of the Legislature that there was a bill then pending before the Governor, which had already passed the Legislature, which was as follows:

"Chapter 566 of the Laws of 1890, entitled 'An Act in Relation to Transportation Corporations excepting Railroads, constituting Chapter 40 of the General Laws,' is hereby amended by adding thereto a section to be Section 23, and to read as follows:

'Section 23. EXISTING ROUTES AND EXTENSIONS.—Any corporation incorporated under any law of this State heretofore enacted which owns and operates a lawfully established stage route which has been continuously operated by such company or its predecessors in title to such route for five years last past in any city of the first class, is hereby authorized and empowered to extend its existing routes at any time or times and to operate the same as extended with stages and omnibuses propelled by electricity or any other motive power, in and upon any streets and highways of such city, without further or other authority, proceeding or consent required under any act, general, public, private or local; provided, however, that such extensions shall not become valid until they shall have been first approved by the State Board of Railroad Commissioners who, on giving their approval, shall make a certificate of such extension or extensions of route as approved, which certificate shall be filed in the Office of the Secretary of State, and in the Office of the Clerk of the County in which such extension is located. Such company, on filing in said Offices an acceptance of the extensions specified in such certificate and on operating such extensions, shall have the right to charge a fare not exceeding 10 cents per passenger for a continuous ride over the whole or any part of the routes owned or operated by it, and shall pay a license fee to the city in which it operates equal to the charge now in force for licensing similar

stages and omnibuses, and shall also pay to the Comptroller or other chief fiscal officer of said city five percentum per annum of its gross receipts from the operation of said routes.

‘Section 2. This Act shall take effect immediately.’”

Now, did anyone, Mr. Rogers, or anyone else, speak to you or inform you that such a bill as I have read was then pending before the Governor? A. I don't recall that they did, except I had the tip to buy the stock. I don't recall it.

Q. Did you have the tip from anyone else except Mr. Rogers? A. Well, I think I bought some stock for someone else there.

Q. Who else? A. Well, I can't remember now. You have the books of those things there that will tell you.

Q. That was prior to the purchase you made for Mr. Rogers, was it not, do you recall? A. No, I do not.

Q. Did not you buy some stock of the New York Transportation for Speaker Nixon, do you recall? A. I don't recall.

Q. Didn't you on the 22nd of March of that year buy 400 shares for Speaker Nixon? A. I may have done it, but I don't recall that. All I recall from that came from what I saw in the newspaper.

Q. I am endeavoring to refresh your recollection. From your prior recollection you stated that the first time you heard of it was when you bought 100 shares on April 18th for Mr. Rogers. Now, don't you recall? A. Remember, this is ten years ago.

Q. Certainly. I am trying to refresh your recollection. Don't you recall that on March 22nd prior to that time you had bought 400 shares for Speaker Nixon? A. That may have been, but I bought first four —

Q. You stated that you first heard of it when you bought for Rogers and later put up \$500? A. What called that to my attention was a newspaper sketch I saw in regard to my being connected with that company. Now, it may have been that way. I don't dispute it.

Q. Do you recall whether you communicated with Speaker Nixon about this either by phone or letter or by word of mouth or by message? A. No, I do not.

Q. Do you recall telegraphing him in regard to it? A. I may have. I don't recall.

Q. Did you on March 22nd, 1900, send the following telegram: "F. F. Nixon, Albany, New York. Imperative that nothing is done bill late as possible next week." Signed, "T.?"

A. I don't know what that means. What book is this in?

Q. Yes, that is a copy of a telegram. I show you a book belonging to Tellingwood & Cunningham, being a copy of telegrams from March 7th, 1900, to April 23rd, 1900, and ask you if you sent that telegram? A. Surely, I don't know nothing about it, if I did.

Q. You don't recall sending it? A. No.

Q. You don't say that you did not send it? A. I don't know anything about it. Let me think a minute — I don't know what that means at all.

Q. I am not asking you what it means. First, did you send it? A. I don't remember ever sending such a thing.

Q. Is not that your handwriting? A. No, sir.

Q. Whose handwriting is it? A. I don't know. I wish I could write as well as that. That is not my handwriting, anything of the kind.

Q. Well, the telegram is dated March 22nd? A. Yes.

Q. That was on Thursday. The bill was then pending in the Senate. You say that "Imperative that nothing should be done until as late as possible next week." The bill remained in the Senate and was passed on Thursday, the last legislative day of the following week. Does that aid your recollection? A. No, no, it does not. I know nothing about these things — about that bill.

Q. That is all for the present, Mr. Rogers. I want to examine you at a later date in regard to your account? A. May I answer that that is not my writing?

Q. Do I understand you that that telegram was not sent by you or by your direction, or by your knowledge? A. I know nothing whatever about that telegram. It is not my writing, and I know nothing about it.

Q. I am not asking for your recollection, I am asking for your knowledge. Do you say to me that that telegram was not sent by your direction and with our knowledge, or do you simply mean that you now have no recollection of it? A. If I had to

answer this instant, I would say the former — it was not. I had nothing to do with that.

Chairman MERRITT: The Committee will stand in recess until 2:30. All witnesses subpoenaed will be in attendance at 2:30 p. m.

AFTER RECESS.

2:30 P. M.

LEOPOLD S. BACHE, called as a witness.

Mr. HENRY WOLLMAN: Mr. Chairman —

Judge BRUCE: I object —

Chairman MERRITT: Do you wish to have your appearance noted as attorney for Mr. Bache?

Judge BRUCE: Under your ruling no appearance will be noted for any witnesses or their counsel; the presence of counsel is to be noted as a matter of courtesy.

Chairman MERRITT: Note his presence.

Mr. WOLLMAN: On behalf of Mr. Bache I have a motion here —

Judge BRUCE: I object to any statement by counsel or any motion.

Mr. WOLLMAN: A witness, as I understand it, always has a right to file a motion to set aside a subpoena with reference to him. Now this motion that we have here is to set aside that part of the subpoena which directs Mr. Bache to bring in the books of J. S. Bache & Company.

Judge BRUCE: Just a moment. I object to any statement of counsel or any motion by counsel. The Committee has ruled that counsel shall not appear for the purpose of participating in the proceedings, and this is participating in the proceedings.

Chairman MERRITT: I think I will sustain the objection.

Mr. WOLLMAN: Let me state —

Judge BRUCE: I object to any statement going on the record.

Mr. WOLLMAN: I think it is always proper for a witness to make a motion through counsel to quash a subpoena. The witness

being a layman, of course, cannot make his own motion. I would like to hand your honors the authorities and would like to have you look them over.

Chairman MERRITT: We will not take that up at this time.

LEOPOLD S. BACHE, being called as a witness and duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. Portchester, New York.

Q. What is your business? A. Banker and broker.

Q. What firm are you connected with? A. J. S. Bache & Company.

Q. Where are their offices? A. 42 Broadway.

Q. Who are the other members of the firm? A. J. S. Bache —

Q. What is the first name? A. Jules. William J. Wollman, Herbert A. Sheftel, George B. Hernauer, Samuel Hesberg.

Q. How long has this firm been in existence? A. Twenty-four years.

Q. Doing a general brokerage business? A. Yes, sir.

Q. And it has books and ledgers showing its accounts from January 1st, 1899, to January 1st, 1906? A. Yes, sir.

Q. (Showing paper to witness.) Was a copy of the subpoena which I now show you served upon you? A. No, sir.

Q. Have you the copy served upon you?

(Subpoena produced by Mr. Wollman and handed to Judge Bruce.)

Q. I don't think you understood my question. I asked you if a copy of this subpoena was served upon you. A. I said no.

Q. Isn't the one you hold in your hand a copy of this? A. No, sir.

Q. (Showing witness another paper.) Well, this subpoena was served upon you? A. Yes, sir.

Q. The other original was made to Leopold, and one to J. S. Bache. By the subpoena you are directed to bring before the Committee at its hearing to-day the ledgers of the firm of J. S. Bache & Company covering transactions from January 1st, 1899,

to date. Have you done so? A. In answer to that I would like to read a little statement.

Q. I ask you for a categorical answer. Have you done so?

A. I have not.

Q. Those ledgers and books are in the possession of your firm in its custody and under its control, are they not? A. They are not in my custody.

Q. No, but they are in the custody and control of the firm of which you are a member? A. Yes, sir.

Mr. WOLLMAN: I would like to make a statement if I may be permitted to do so. I think it is only fair to the witness, Mr. Chairman, don't you think so?

Chairman MERRITT: Not at this time. We will give him an opportunity later.

Mr. WOLLMAN: He has a statement about fifty lines long. He does not want to be in the attitude of doing this wantonly. He gives the reasons why he does not do it, as otherwise it might be said that he wilfully refused to bring the books.

Judge BRUCE: I don't think the witness has any right to make any excuse why he does not obey the mandate of the Committee. He states that the subpoena was served upon him, that the books are in his custody and under his control, and that he has not produced them.

Mr. WOLLMAN: Isn't it fair to give the witness a chance to say why he has not, so that when you come to rule upon it you will know why he has not?

Chairman MERRITT: I think at the present time the witness has gone as far as is material one way or the other. You might submit the statement to counsel to the Committee.

Q. The reason you have not produced them is not because you were not physically able to produce them? A. I was physically unable to do what was requested in the subpoena.

Q. In what respect? A. The books were requested up to date, and I could not interfere with all the workings of our offices to bring those books up to date.

Q. I will waive that portion of the subpoena and make it up to January 1st, 1906. A. My counsel told me that the subpoena was irregular.

Q. Who is your counsel? A. Mr. Wollman.

Q. What is his first name? A. Henry.

Q. Then you would be physically able to produce your books from January 1st, 1899, to January 1st, 1906? A. Unquestionably.

Mr. WOLLMAN: Now, I think, in view of the fact that he asked him what the opinion or views of his counsel were, that he should be permitted to make this statement. I think you ought to give him that much consideration and let him state his reasons to you, then you would know why he has not produced the books.

Judge BRUCE: I think, Mr. Chairman, that the laws of the State provide a form in which he can make that excuse. In section 59 of the Penal Code it is made a misdemeanor to fail to produce books and papers that are material before a committee of the Legislature, and if there is any reason why they should not be produced, I think that is the proper form for the witness or his counsel to offer that excuse in, to the Legislature of the State of New York, of which it is a contempt to refuse to obey the mandate or subpoena of its committee.

Mr. WOLLMAN: This subpoena is illegal, and it is not a misdemeanor to refuse to obey an illegal subpoena. It is only made a misdemeanor to refuse to obey a legal subpoena, and that cannot happen until you have ruled upon it, or before you have ruled that it is legal. This is not in violation of the laws of this State. This is a subpoena to produce all their books, and such subpoenas have been condemned by the courts of this State, and by the United States Supreme Court, and that is the reason.

Chairman MERRITT: You have stated it very fully and I think that will be sufficient.

WILLIAM W. COLE, called as a witness, being duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Cole? A. In New York and Philadelphia.

Q. Whereabouts in Philadelphia? A. At the Raquette Club.

Q. Where is that? A. It is on 16th street.

Q. Whereabouts in New York? A. 135 West 47th street.

Q. What is your occupation? A. Civil engineer, member of the firm of Dodge & Day, Philadelphia.

Q. Where are their offices in Philadelphia? A. 608 Chestnut street.

Q. Have they also offices in New York? A. No, sir.

Q. Have you an office in New York? A. Not at this time.

Q. Where did you reside prior to the time you took up your residence in Philadelphia? A. At Elmira, New York.

Q. When did you leave Elmira? A. Two years ago in July.

Q. That would be in July, 1908? A. 1908; yes, sir.

Q. What was your business when you were in Elmira? A. Vice-president and general manager of the Elmira Water, Light and Railroad Company.

Q. Did you have any other business or occupation? A. I did some consulting business as an engineer.

Q. Are you acquainted with G. Tracy Rogers? A. Yes, sir.

Q. Who testified this morning? A. Yes, sir.

Q. How long have you known Mr. Rogers? A. For a period of about fourteen or fifteen years.

Q. Were you connected with any utilities companies with which he was connected? A. No, sir.

Q. Was he an officer or director of the company you were connected with in Elmira? A. No, sir.

Q. Were you at one time an officer of the Street Railway Association of the State of New York? A. I was.

Q. And when did you first become connected with the association? A. I believe it was in 1894-95, that was the first connection.

Q. What was your first connection with it? A. Vice-president.

Q. Prior to that time you had not been connected with it at all? A. I was a member of it, that is, the street railroad with which I was connected was a member.

Q. In 1903-04 you were the secretary and treasurer of the association? A. Yes, sir.

Q. I understand you to say that prior to that time you had not been an officer. A. No, that was in 1894-95.

Q. After 1894-95 were you an officer of the association? A. No, sir, not until 1903-04.

Q. But during the intervening years the railroad with which you were connected was a member of the association? A. Yes, sir.

Q. Now, in 1903-04 you were the secretary and treasurer? A. I was.

Q. Also in 1904-05? A. Yes, sir.

Q. And also treasurer in 1905-06? A. Yes, sir.

Q. Have you been connected with it since that time? A. No, sir.

Q. Not as an officer? A. No, sir, and not as a member — that is, I am an honorary member yet.

Q. What were your duties as secretary and treasurer of the association? A. The general disbursement of the funds.

Q. And, while your treasurer, keeping a record of the proceedings of the association? A. Yes, sir, as secretary.

Q. Did it keep a minute book? A. Yes, sir.

Q. And in this minute book was there kept an accurate account of the meetings of the association and its transactions? A. There was.

Q. And was there also kept a treasurer's book? A. There was.

Q. And in this treasurer's book was there kept a record of the receipts and disbursements of the association? A. There was.

Q. When you ceased to be secretary what did you do with the secretary's book that contained the minutes? A. They were turned over to the association, the president.

Q. What kind of a book was it? A. It was in practically the form of a ledger.

Q. Do you remember when you made the transfer of it to the association? A. Why, it was at their annual meeting — I think at that time their meeting was held in September, it is now held in June.

Q. Of what year would that be? A. That was in — I think it was in 1906.

Q. 1906? A. Yes, sir.

Q. And to whom did you deliver the books? A. I turned them over to Mr. Beardsley, who was my secretary, and who followed me as treasurer.

Q. You say he was your secretary. Do you mean he was your secretary, secretary to you privately? A. Of the Elmira Water, Light and Railway Company.

Q. And who succeeded you as secretary of the Street Railway Association? A. He was connected with the Street Railroad Review, I cannot recall his name just now.

Q. Was it C. B. Fairchild, Jr.? A. Yes, sir.

Q. You think you turned those books over to Mr. Beardsley, who was secretary of the railroad in Elmira? A. Yes, sir.

Q. Do you know what he did with them? A. They were turned into the association's hands.

Q. To your knowledge? A. Why, yes, because the reports were all read at the association and accepted at that time.

Q. To what officer of the association did you deliver them, or were they delivered to your knowledge? A. They were practically delivered to the president.

Q. And the president at that time was John S. Shanahan? A. Yes, sir.

Q. And the delivery was made to him, was it? A. Yes, sir.

Q. What did you do with the books of the treasurer? A. They were presented to the association at its annual meeting and I believe were turned over to Mr. Beardsley as my successor.

Q. Did you make the transfer yourself? A. I think they were made by the president of the association.

Q. You think you delivered both your books as treasurer and your books as secretary to the president of the association, Mr. Shanahan? A. Yes, sir, I believe I did.

Q. At this meeting at which he was elected president? A. Yes, sir.

Q. Do you know what he did with them? A. I do not.

Q. Have you ever seen them since? A. No, sir.

Q. What were the treasurer's books like? A. There was a cash book, and a bill book — there were only two books.

Q. Did the association also have a check book? A. Yes, sir.

Q. More than one? A. No, sir.

Q. Did it also have a deposit book? A. Yes, sir.

Q. Where were the records of the deposits kept? A. While I was treasurer they were kept at the Chemung Canal and Trust Company.

Q. You mean that is where the deposits were kept — where were the records of the deposits kept? A. They were all kept by Mr. Beardsley for me.

Q. Were they kept in a check book or in a separate deposit book? A. They were kept both in a check book and in a separate deposit book.

Q. What was this deposit book like? A. It was just a small book about six by eight, a blank book.

Q. What was done with this book at the time you ceased to be an officer of the association? A. All books and accounts were turned over to the association.

Q. Where was the account — you stated it but let me ask you again — where was the account of the association kept, its bank account? A. While I was treasurer it was kept with the Chemung Canal and Trust Company.

Q. In Elmira? A. Yes, sir.

Q. Did it have any other account? A. No, sir.

Q. Now I understand you to say that the account was kept with the Chemung Canal and Trust Company? A. Yes, sir.

Q. During the years that you were the treasurer? A. Yes, sir.

Q. Do you know where its accounts were kept prior to that time? A. No, sir.

Q. Haven't you any knowledge? A. Not absolutely; no, sir.

Q. Didn't anything which you had or anything which you saw after you became treasurer inform you of where their account had been previously kept? A. As a matter of fact I had a deficit when I took charge that I had to look after.

Q. Hadn't they had a previous bank account? A. Yes, sir.

Q. Do you know where it had been kept? A. I am not positive.

Q. What would be a good guess? A. I think it was kept with Ellingwood & Cunningham.

Q. And do you know how long it was kept with Ellingwood & Cunningham? A. No, I do not.

Q. You changed it after you became treasurer from Ellingwood & Cunningham to the Chemung Canal and Trust Company, did you? A. Yes, sir.

Q. Why did you make the change? A. So it would be convenient at Elmira. My home and business were all located there.

Q. Did they have an account with any other institution beside the Chemung Canal and Trust Company while you were treasurer? A. I could not say as to that.

Q. Don't you recall? A. I had no accounts that I checked or anything of that kind.

Q. Did you have any accounts from which you did not check? Search your memory, will you? Let me refresh it a little. Didn't you have an account with the Morton Trust Company of the city of New York? A. There was, I believe, some account there at first, but everything was given over to me after the first two or three months that I was treasurer.

Q. Didn't the association, while you were treasurer, have an account with the Morton Trust Company of the city of New York, and didn't you draw checks upon that account? A. My memory is that the whole thing was transferred very soon after I was treasurer.

Q. Then when you became treasurer the association did have an account with the Morton Trust Company? A. I think there was; yes, sir.

Q. Now, can you think of any other institution in which they had an account? You said they had an account with Ellingwood & Cunningham and with the Morton Trust Company when you became treasurer. Can you think of any other institution in which they had an account? A. I can't remember any at this time.

Q. Do you recall whether they had an account with the Guarantee Trust Company of the city of New York? A. I don't remember that they did; no, sir. I received some checks from the Morton Trust Company, but I don't remember having any from the Guarantee.

Q. You mean by checks, of course, returned vouchers? A. Returned vouchers; yes, sir.

Q. What did you do with those vouchers after they were returned? A. They were taken by Mr. Beardsley. Mr. Beardsley, my secretary, looked after the accounts.

Q. He took charge of them? A. Yes, sir.

Q. Do you know what he did with them? A. I think they have all been turned over. All vouchers and accounts in our possession I know were turned back to the association.

Q. Now, at the time you were treasurer, you as treasurer had authority, had you not, to draw checks upon the funds of the association no matter where they were deposited? A. Yes, sir.

Q. Do you know Alexander S. Hackley? A. I don't remember, no, sir.

Q. Did you know him when you were treasurer of the association? A. I think not.

Q. Refresh your recollection. He was connected with the firm of Ellingwood & Cunningham. Do you remember knowing him? A. No; sir, I do not.

Q. Do you remember ever having any business dealings with him? A. Not that I remember; no, sir.

Q. Were you ever connected in any business enterprise with him? A. No, sir.

Q. Do you recall ever having made any transfers of money to him? A. I have not had a chance to look over any accounts lately.

Q. I am asking you for your recollection now, as far as you can recall. A. No, sir. If I had a little time to look over some of the accounts I could tell very clearly.

Q. To what accounts do you refer that by looking them over it might possibly refresh your recollection? A. I kept a note book at the time, as Mr. Beardsley had the accounts, a personal note book so I could keep track of it.

Q. What was in this book? A. I kept track of the amounts of money coming in just as I would in my railroad, moneys coming in, bills receivable, bills payable, etc.

Q. What became of that note book? A. I have it in my files somewhere, now stored away, I think possibly in Philadelphia.

Q. Will you produce it? A. I will try to.

Q. Will you either produce it in person or send it to me and I will see that it is returned? I prefer you to produce it personally.

Q. Let me refresh your recollection. Do you recall on June 26th, 1903, when you were treasurer of this association, having sent to Mr. Hackley \$2,500, a check of \$2,500 as treasurer of the Street Railway Association? A. Why, there was a transfer of that amount, and I don't remember whether it was Mr. Hackley or Mr. Rogers.

Q. Do you remember on July 10th, 1903, of having sent Mr. Hackley a check for \$7,500? A. There was a transfer of \$7,500; yes, sir.

Q. Do you remember on July 24th, fourteen days later, of having sent — July 24th, 1904, of having sent him a check of \$10,000? A. I know there were two or three transfers, but I don't remember whether it was Mr. Hackley or Mr. Rogers.

Q. Do you recall, beginning with June 26th and ending with July 24th, which you will note lacks two days of being a month, that you sent to Mr. Hackley \$20,000. Do you recall that? A. At one time? There was a transfer, but I don't remember the amount.

Q. Do you recall ever having sent him any money prior to that time? A. No, sir; I don't recall it.

Q. Do you recall having sent him any money subsequent to that time? A. No, sir; I do not.

Q. I show you a letter dated Elmira, July 10th, 1903, reading as follows: "Ellingwood & Cunningham, 43 Wall Street, New York City. Gentlemen: I have to-day made a draft in your favor on the Morton Trust Company of \$7,500 for which please send me acknowledgment. Enclosed find draft. Yours truly. Street Railway Association of the State of New York. W. W. Cole Treasurer." Is that your signature? A. Yes, sir, it is.

Q. Does that refresh your recollection as to you having sent that amount on that date? A. Yes, sir.

Judge BRUCE: I will have that marked in evidence as Exhibit 1.

Q. I show you a letter dated Elmira, New York, July 24th, 1903, which reads as follows: "Mr. A. S. Hackley, % Ellingwood & Cunningham, 43 Wall Street, New York City. Dear Sir: I enclose draft in your favor for \$10,000 for which please send me receipt. Yours truly. W. W. Cole, Treasurer." Is that your signature? A. Yes, sir.

Q. Did you send that letter? A. I did.

Q. Does that refresh your recollection as to having sent \$10,000 on that date? A. It does.

(Letter just referred to marked in evidence as Exhibit No. 2.)

Q. Did you on shortly after June 26th, 1903, receive a letter from Ellingwood & Cunningham as follows: "June 26th, 1903. Mr. William W. Cole, Treasurer Street Railway Association,

Elmira, New York. Dear Sir: Yours of the 25th inst. received, enclosing check for \$2,500 of which we will advise Mr. Rogers as soon as he returns to town. Yours truly. Ellingwood & Cunningham, J. W. C."—the initials in the corner. Did you receive that letter? A. I did, yes, sir.

Q. And does that refresh your recollection that shortly prior to that time, namely, on the 25th inst., you had forwarded a check to them of \$2,500? A. Yes, sir.

(Letter last referred to marked in evidence as Exhibit No. 3.)

Q. Now, did you, on or about July 14th, receive the following letter personally: "July 13th, 1903. Mr. William W. Cole, Elmira Water, Light & R. R. Co., Elmira, N. Y. Dear Sir: Your favor of the 10th instant received enclosing check on Morten Trust Company for \$7500 which we have passed to the credit of the Street Railway Association of the State of New York. With thanks, we are, Yours truly, Ellingwood & Cunningham." Did you receive that letter? A. I did.

Q. And that refreshes your recollection, together with the other letter, of having sent \$7,500? A. It does.

(Letter last above referred to marked in evidence as Exhibit No. 4.)

Q. Prior to July 24th, 1903, which was the time that you sent the \$10,000, do you recall that a day or two before that time you had sent them a check for that amount and that they returned the check and asked you to mail them New York funds for the amount? A. I believe there was a request for a draft, or something of that kind.

Q. Did you receive the following telegram: "July 23, 1903. W. W. Cole, Elmira, New York. Your check returned and please mail today New York funds for Ten, order A. S. Hackley. E. & C."? A. I think I did, yes, sir.

Q. That refreshes your recollection? A. Yes, sir.

(Telegram referred to marked in evidence as Exhibit No. 5.)

Q. Did you receive the following letter: "July 27th, 1903. Mr. W. W. Cole, Elmira, New York. Dear Sir: Yours of the

24th instant received, enclosing draft for \$10,000 for which please accept thanks. Your letter did not arrive until this morning, having been registered on the 25th, which explains the delay in arriving here. Very truly yours, A. S. Hackley." A. I believe I did, yes, sir.

Q. Now, Mr. Cole, from what banking house did you secure the draft for the \$10,000? A. Why, I am not absolutely sure whether it was the Morton Trust Company or the Chemung Canal Trust, because I don't remember at this time on what date I transferred the account.

Q. Having sent it from Elmira, what would your impression be on having sent either the funds or the draft? A. I should say from the Elmira Chemung Canal Trust Company.

Q. How many members did the Street Railway Association have during the time that you were an officer of it? A. Why, I think there was in the neighborhood of from twenty-five to thirty.

Q. And what was its total annual receipts as nearly as you can recall? A. Why, it varies somewhat, from about \$6,500 to about \$8,000, I think.

Q. You think \$8,000 would be the largest amount it received in any year? A. I think that is the largest amount I received.

Q. And when you became treasurer of it, it had a deficit, did it? A. It did.

Q. Do you recall how large that deficit was? A. I do not.

Q. Could you give it to us approximately? A. Why, my memory was that it was \$10,000, but I am not sure, without going back to the accounts.

Q. To whom did it owe the \$10,000, to any one person or to a group of persons? A. Why, there was a deficit from the preceding years, and the executive committee with the president — in fact, it was agreed upon when I took the treasuryship, that all deficits would be taken care of.

Q. To whom did it owe this deficit? A. Why, that I could not say. It was a deficit which was entirely contracted while I was not an officer and had nothing to do with the accounts.

Q. Don't you know to whom it owed the deficit? A. No, sir, I do not.

Q. Were not you ever told? A. Why, no; as I take it for

granted that it was under a great many accounts, or at least, a number of them. .

Q. Give us the name of all those you can recall? A. I don't recall any at all. It was taken — Mr. Rogers, the president was about with us, to be furnished the money, to be taken care of, the bank back accounts, during his administration.

Q. What were these expenditures made for which created this deficit? A. Well, now, that I could not tell you.

Q. Was there anything in the books or record of the association which would show what caused the deficit? Q. Why, I did not take up the old books at all. I opened a new set of books of my own at the time.

Q. You did not look into the old books at all? A. No, sir, I did not.

Q. Never examined them? A. No, sir.

Q. What became of the old books? A. Why, I think they are all in the association's possession.

Q. And, though you were elected treasurer, you never examined the books of the previous treasurer that were turned over to you? A. Why, I looked over the accounts, that is, the regular accounts, yes. I had the treasurer's account from the association meeting at that time, of their annual meeting, turned over to me.

Q. How long was this deficit carried? A. I could not tell you that.

Q. One year or two years, or five years? A. I don't know.

Q. Had it been a growing deficit or a deficit made in one lump sum? A. I think it was a growing deficit.

Q. What makes you think so? A. Why, I should not presume that all that would be contracted at any one time.

Q. Was it a mere matter of presumption, or was something said, or did you see something that led you to believe that it was a growing deficit? A. Why, I did not see anything, no, sir. I think it was through conversation with the executive committee.

Q. Who were the executive committee? A. I don't remember who was the executive committee at that time.

Q. Do you remember the names of any of them? A. Why, I would have to look over the records.

Q. You mean members of the executive committee at the time you became treasurer? A. Yes, sir.

Q. Look at the annual report of the 27th annual meeting, 1909 and see if you can tell me what members of the executive committee you talked with that led you to believe that this had been a growing deficit. A. Well, with Mr. Allen, and Mr. Nostrand and Mr. Pardee.

Q. What did they say about this deficit? A. Why, my memory was that all obligations of the association would have to be taken care of, and that if I became treasurer, that they all would be met.

Q. What did they say in regard to the nature of them or the extent of them? A. Why, I believe they stated that they believed that the association could be conducted on a much cheaper basis.

Q. Well, if I understand correctly, that the only business of this association was to give an annual banquet, to have meetings and discuss questions relative to the improvement or the betterment of the properties of the various members of the organization and to look after legislation, is that correct? A. As far as it affected the operation of railroads and their conduct with the public; yes, sir.

Q. And you say that your gross annual income was \$8,000? A. About \$8,000; yes, sir.

Q. Was that a fair average income? A. From the regular receipts; yes, sir.

Q. Where did this deficit of \$10,000 come from? A. Why, I think that it came from the contributions.

Q. From the contributions? A. In previous years; yes, sir.

Q. You mean from the contributions, a deficit came from contributions? A. I think so.

Q. You mean that the association had made contributions which resulted in creating a deficit? A. I think that they had.

Q. To what sort of contributions? A. A campaign.

Q. To whom? A. Well, now, I could not tell you that.

Q. To political organizations or individuals? A. I think it was political organizations, yes, sir.

Q. Which party, or both parties? A. Why, I should presume, both parties.

Q. Well, now, is it a matter of presumption or are you speaking somewhat from knowledge? A. Presumption.

Q. Wholly? A. Only, yes, sir.

Q. Nothing of what was told you by members of the executive committee? A. No, sir.

Q. Nothing that you saw in the books or correspondence or records of the association? A. No, sir.

Q. Why do you think then that there were political contributions which created this deficit? A. Why, from the general conversation I had had with the executive committee.

Q. Yes, but you told me just now that it was not from anything that any member of the executive committee said? A. Why, say it is a presumption from the general conversations; yes, sir.

Q. Now, state as nearly in substance, any conversation you had with any member of the executive committee, that led you to believe that the deficit had been created from contributions to political parties? A. At this date, I cannot remember. That is quite a number of years ago.

Q. You cannot recall? A. No, sir. My interests have been so entirely divergent that I have not kept up my associations.

Q. Can you remember what political organization, State or local, of either party, Republican or Democrat, to which these contributions had been made? A. I don't know.

Q. Did you ever know? A. No, sir, I never knew.

Q. Was anything ever said to you by any member by which you were informed of it? A. No, sir.

Q. Do you know of any way by which we can ascertain that fact? A. Why, only by the officers at that time of the association.

Q. What officers would you suggest that we should inquire of? A. Mr. Rogers.

Q. He ran the whole thing, did he not? A. He was president of the association, yes, sir.

Q. That is, he was the president? A. Yes, sir.

Q. And his duties as president practically controlled all the activities of the association, did they not? A. Why, to a certain extent, yes, sir.

Q. To a large extent? A. To a very large extent, yes, sir.

Q. Practically wholly, was it? A. Well, no, there were other things that he did not control.

Q. They were rather small things, were they not? A. Why,

no — at least, the regular meetings in regard to the standardization of the accounts and equipments, and as far as went the standardization of operation, I don't think Mr. Rogers had much to do with those.

Q. But the real operation, you think Mr. Rogers did? A. That was the real operation.

Q. The others were incidental? A. They were incidental, yes, sir.

Q. That is all the information is it that you can give us, or suggestions with relation to our ascertaining when these contributions were made and to whom they were made? A. Absolutely, yes, sir.

Q. Do you know of any paper, document, book or record in existence anywhere or that ever was in existence, from which we could ascertain when these contributions were made, or to whom they were made? A. I do not.

Q. Will you search your memory, Mr. Cole, and if you can recall any individual other than Mr. Rogers or any book, paper or document that ever has been in existence from which we could ascertain when those contributions were made and to whom they were made, and will you come here and tell us? A. I certainly will; yes, sir.

Q. Now, how was this deficit made up? A. By special contributions.

Q. From whom? A. The various members of the association were requested to contribute and make up the deficit.

Q. And did they all contribute? A. Not all, no, sir.

Q. Which ones contributed? A. I could not tell at this date.

Q. From whom were the largest contributions made? A. That I think was largely from the gross earnings of the company. It came very much on the basis of the annual dues.

Q. This memorandum book you kept, if it is in existence, would show, would it not? A. Why, no, because that shows my deposits that I kept personal track of, because I had a number of deposits of different companies.

Q. These contributions were deposited? A. Oh, yes. It will show the contributions, yes, sir.

Q. They were deposited with the Chemung Canal Trust Company. A. Yes, sir.

Q. Would you say that the Metropolitan Street Railway Company of the city of New York, its president, H. H. Vreeland, or solicitor, Mr. Robinson, contributed to that deficit? A. The Street Railway Company, I am very positive it did.

Q. What did it contribute? A. I could not remember.

Q. What would you say approximately — a \$10,000 deficit — now, what would you say the Metropolitan contributed? A. I think they contributed, must have contributed, three or four thousand, but I am not positive.

Q. What other company made large contributions if you recall? A. Practically all the large companies.

Q. Just name the large companies? A. The Brooklyn Rapid Transit.

Q. How much do you think the Brooklyn Rapid Transit contributed? A. I could not say.

Q. Give us your best recollection? A. I should think they contributed probably \$1,500 or \$2,000.

Q. Now, there is \$5,000. What other company? A. I believe the Buffalo company.

Q. What is the name of that company? A. Why, it is the International.

Q. How much would you think the International contributed? A. I think they gave about \$1,500.

Q. That brings it up to \$6,500? A. Yes, sir.

Q. Would you give us the name of any other large contributor toward the balance of the \$3,500? A. Syracuse, Rochester and Utica.

Q. Give us the name of the roads. A. The Syracuse Rapid Transit, and the Rochester Street Railroad, and the Utica, I think, was the Mohawk Valley at that time.

Q. How much did they give? A. They gave about \$500, I think.

Q. That makes up \$1,500 more? A. Yes, sir.

Q. That leaves about \$2,000? A. Yes, sir.

Q. Did any of the other two thousand, you think, come in large contributions? A. No, sir, generally small.

Q. How much did your company give? A. I believe we gave \$250.

Q. And the other came from other companies in small amounts.
A. Yes, sir.

Q. Now, Mr. Cole, for what purpose did you send \$20,000 to Mr. Hackley from June 26th, 1903, to July 24th, 1903? A. Why that was to make up the deficits of the association which it had been agreed to take care of when I became treasurer of the association.

Q. I thought you said that that deficit was \$10,000? A. Well I am not positive about it. I would have to go over my account to see whether it was ten or fifteen, but my memory was \$10,000.

Q. Was all this money sent Mr. Hackley for the purpose of making up the deficit? A. That is what I think, the deficit, and we agreed, moneys to be paid — that is, the agreement for money to be paid.

Q. What agreement? A. What I think — Mr. Rogers had some old outstanding, not agreements, but outstanding obligations which were not paid up.

Q. With whom? A. I don't know.

Q. What knowledge did you have of it? A. Why, that is the only knowledge that I had, that there were certain obligations which had got to be met.

Q. Now, Mr. Cole, just see — pause a moment and search your recollection, and see if you cannot give us a little more definite information in regard to these agreements, to whom these obligations were to be paid? A. I never knew.

Q. Did Mr. Rogers tell you that there were obligations? A. He did not tell me personally. That came through the president of the company and the executive committee.

Q. Did they state to you that there were no obligations to be paid? A. Yes, sir.

Q. Did they tell you to whom to send the money? A. The instructions, all that came through the instructions from the executive committee and the president.

Q. Which president do you refer to, what year? A. Why, when I was treasurer.

Q. Who was president then? A. Mr. Connett.

Q. Then it was from Mr. Connett and the members of the executive committee who were members during the time he was president? A. Yes, sir.

Q. Was he president during more than one year? A. No, I think not.

Q. Then the members of the executive committee that year would be C. Loomis Allen, general manager of the Utica and Mohawk Railroad Company, residing at Utica, New York? A. Yes, sir.

Q. B. B. Nostrand, residing at Peekskill, New York; W. H. Pouch, residing at New York, New York, and J. H. Pardee, treasurer, residing at Canandaigua, New York? A. Yes, sir.

Q. Now, through the instructions of Mr. Connett, the president, and these members of the executive committee, this money was forwarded by you to Mr. Hackley? A. Yes, sir.

Q. For the purpose of paying moneys that Mr. Rogers had agreed to pay? A. The old obligations of the association.

Q. Now, were these instructions given to you at a meeting of the executive committee? A. Well, I presume they must have been, yes, sir.

Q. Were they given to you at a meeting of the committee — was a resolution passed, or was it an oral direction? A. Why, my memory is that there was a resolution passed.

Q. Entered upon the minutes? A. I think so; yes, sir.

Q. Do you remember when that meeting was held? See if you can refresh your recollection from this (showing book)? A. Why, I am quite positive that it was held at Utica, but I don't remember the exact date without looking that up now.

Q. What year? A. Why, it was either early in 1903 or the latter part of 1902, but I am not positive which, now.

Q. Early in 1903 or the latter part of 1902. You kept the minutes — you were the secretary then, were you? A. Yes, sir; I think I was.

Q. And you kept the minutes? A. Yes.

Q. And a resolution was passed and entered by you in the minutes to that effect? A. Yes, sir, I think they were.

Q. Do you think you could recall whether that was in the last months of 1902, or the first months of 1903? A. My memory is it was the first months of 1903.

Q. After the Legislature had convened, do you think? A. Well, now, I am not positive of that.

Q. Was Mr. Rogers present at that meeting? A. I do not think he was, no, sir; I am very sure he was not.

Q. Now, Mr. Cole, don't you know as a matter of fact that Mr. Rogers stated to the officers of the association that this money was owed to the members of the Legislature of the State of New York and should be forwarded by you as directed for the purpose of liquidating those obligations? A. No, sir.

Q. Didn't he state that in substance? A. No, sir, not to me or in my hearing.

Q. Did any of the officers of the association, either Mr. Connette, the president, or any of the members of the executive committee, state that, or that in substance to you or in the presence of the committee? A. No, sir, they did not.

Q. Don't you know what became of the money that you sent to Hackley? A. No, sir, I have not the slightest idea. I have nothing to do with it whatever.

Q. Don't you know, Mr. Cole, what was done with the money that Hackley received. I think I know, but I want to know what you know? A. I do not.

Q. Are you positive about that? A. Absolutely positive.

Q. Now, will you appear next Wednesday at 11 o'clock. Mr. Cole, with the memorandum book — will you appear and bring the memorandum book if you can possibly find it? A. Yes, I believe I can find it. I am quite positive I have it on my files.

Q. And you will appear in any event next Wednesday at 11 o'clock? A. Yes, sir.

Q. And in the meantime, will you search your recollection of the two subjects, first, whether or not there is not some information that you can give this Committee, or some record to which you can refer it, which will show to what political party or organization these payments were made? A. I will.

Q. And second, whether or not there is any fact known to you now, or ever was known to you from which you learned what was done with this money that you sent to Hackley? A. I will.

Judge BRUCE: That is all, Mr. Cole. I will call Mr. Carpenter. Mr. Chairman, I will examine no other witness to-day. Mr. Carpenter, the next witness will exhaust the day, and you might notify all witnesses who are present that they need not remain, but should be here to-morrow at 11 o'clock.

Chairman MERRITT: The hearing will terminate for to-day with the examination of the next witness. All other witnesses can be excused for to-day, to be here to-morrow at 11 o'clock without any notice from counsel.

GEORGE CARPENTER, called as a witness, being duly sworn, testified as follows:

Judge BRUCE:

Q. Mr. Carpenter, what is your residence? A. 696 Halsey street, Brooklyn.

Q. What is your occupation? A. I am a clerk; 5 Nassau street.

Q. With what firm or company? A. Simmons & Slade.

Q. Brokers? A. Yes.

Judge BRUCE: You must speak louder. These gentlemen here must hear you, also this last gentleman sitting over here. If they do not hear you your testimony will be of very little use, and if you will kindly speak up it will facilitate matters very much.

Q. You said you were employed at 5 Nassau street? A. Yes, sir.

Q. By Simmons & Slade? A. Yes.

Q. Is that right? A. Yes.

Q. Brokers? A. Yes.

Q. In what capacity? A. Bookkeeper.

Q. How long have you been with them? A. About 3 years, three and a half.

Q. And all that time you have been a bookkeeper? A. No, sir.

Q. What were you when you first went there? A. I was ticket clerk first.

Q. And when did you become bookkeeper? A. About six weeks ago.

Q. About six weeks ago? A. Yes, sir.

Q. That is the firm with which Mr. Cunningham is connected, is it not? A. Yes, sir.

Q. Prior to the time you went with Simmons & Slade, who were you employed by? A. By C. H. Ellingwood & Company.

Q. C. H. Ellingwood & Company? A. Yes, sir.

Q. Where were their offices? A. 43 Exchange place.

Q. What was their business? A. Brokers.

Q. Was that the same as the firm of Ellingwood & Cunningham? A. No, sir.

Q. That was the successor of Ellingwood & Cunningham, was it? A. Yes; a different firm.

Q. Of whom did the firm consist? A. Of Mr. C. H. Ellingwood and Mr. Davis.

Q. That is the Mr. Ellingwood that formerly had been a member of the firm of Ellingwood & Cunningham? A. Yes, sir.

Q. What was your position with that firm? A. I was bookkeeper.

Q. How long were you with them? A. About a year.

Q. And you left their employ and went with Simmons & Slade? A. Yes, sir.

Q. Is that firm still in existence, C. H. Ellingwood & Co.? A. No, sir.

Q. Did it go out of existence at the time your employment terminated? A. Yes.

Q. Now, prior to your employment with Ellingwood & Co. by whom were you employed? A. Carpenter, Baggott & Co.

Q. And of whom did that firm consist? A. There was Mr. N. L. Carpenter and Mr. Baggott.

Q. How long were you with them? A. About a month.

Q. Is the firm still in existence? A. I believe so, yes.

Q. By whom were you employed prior to the time you went to that firm? A. With Ellingwood & Cunningham.

Q. Where were their offices? A. At 41 Wall street.

Q. And of whom did the firm consist? A. Mr. Cunningham and Mr. Black.

Q. And Mr. who? A. Mr. Black.

Q. Mr. Cunningham and Mr. Black? A. Yes.

Q. What was Mr. Black's name? A. Frank.

Q. When was that firm formed, if you know? A. I don't know.

Q. How long were you with that firm? A. Some five or six years.

Q. What was their business? A. They were brokers.

Q. Who were you employed by before you went with that firm?

A. With the National Broadway Bank.

Q. How long were you with the National Broadway Bank?

A. I think two or three years, I don't remember.

Q. Were you ever employed by the firm of Ellingwood & Cunningham? A. Yes, I stated that.

Q. You stated to me you were employed by C. H. Ellingwood & Company. I want to know if you were ever employed by the firm of Ellingwood & Cunningham? A. Yes.

Q. When were you employed by them? A. After I left the Broadway Bank.

Q. How long did you continue in their employ, between what dates? A. I was there about five or six years.

Q. Beginning when? A. Well, it was about 1899, I think.

Q. And continuing down to what time, to the time the firm failed? A. Yes, sir.

Q. That was February 15th, 1905, was it not? A. I do not remember the date.

Q. Was that about the time, according to your recollection? A. I should say so.

Q. That firm consisted, down to 1902, of Mr. Ellingwood and Mr. Cunningham, and as a special partner Mr. G. Tracy Rogers, did it not? I do not remember the dates; I know they were in the firm, yes.

Q. Do you recall that Mr. Ellingwood left the firm in 1902; in October, 1902? A. I know that he left the firm, yes; I do not recall the date.

Q. Do you recall that Mr. Rogers became a special partner in January, 1900, and continued down to within about six weeks of the time the firm failed? A. Yes.

Q. You were well acquainted with Mr. Rogers, were you not? A. Yes.

Q. Familiar with his handwriting? A. I never saw much of his handwriting; I don't know whether I could tell it or not.

Q. We cannot hear you; if you will please try again? A. I say I never saw very much of his handwriting.

Q. Were you familiar with the handwriting of Mr. G. Tracy Rogers? A. Not very, no, sir.

Q. I did not ask you if you were very; were you familiar with it? A. No, sir.

Q. He was a special partner of the firm with which you were connected as bookkeeper for five or six years; do you know his handwriting? A. I don't know whether I would know it if I saw it or not.

Q. Did you know it at the time you were employed by the firm? A. I probably did.

Q. You probably did; well, did you? A. I think so.

Q. If you had said that at first we would have made just so much more progress. Your position, as I understand, was bookkeeper? A. Yes, sir.

Q. That was the position when you went in, was it? A. No.

Q. What was your position when you first went with the firm? A. Well, assistant bookkeeper.

Q. Assistant bookkeeper? A. Yes.

Q. And who was the bookkeeper then? A. I have forgotten his name. I think it was Stricker; I think his name was Stricker.

Q. What was his first name? A. I don't remember.

Q. How long did he continue as bookkeeper? A. Well, a few months is my recollection.

Q. Only a few months? A. Yes, sir.

Q. And then you became bookkeeper? A. Yes, sir.

Q. And did you remain bookkeeper until the firm went out of existence? A. Yes, sir.

Q. Now, will you please state to me the system of bookkeeping which Ellingwood & Cunningham had when you were with them? A. Well, the system that is used by the ordinary brokerage house. I guess, if that answers your question.

Q. What books did they keep? A. Well, they had ledger and blotter and cash book.

Q. What entries were made in the ledger? A. Entries from the blotter and from the cash book.

Q. That is, the general accounts of all the customers were kept in the ledger, were they not? A. Yes, sir.

Q. And each customer was given a page in the ledger unless his dealings were small, and then he was put among accounts called miscellaneous accounts, was it not? A. I think so, yes.

Q. And if his account afterwards became large it was transferred to a regular page in the ledger, is that correct? A. Probably, yes.

Q. You had a cash book; what was kept in the cash book? A. Well, I guess the cash items.

Q. Now, Mr. Carpenter, will you step down here and save me the trouble of lifting these heavy books. Will you look at the book I now show you and tell me what it is? A. That is one of the ledgers.

Q. What number was it? A. Number 4.

Q. Of the firm of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I will have that ledger marked for identification.

(Ledger marked Exhibit 7 for identification.)

Q. I show you another book; please tell me what that is? A. That is a ledger.

Q. What number? A. Number 2.

Q. A ledger of Ellingwood & Cunningham? A. It seems to be, yes.

By Mr. KRESSEL:

Q. Don't you know? A. I did not notice this part here. I did not keep those books.

By Judge BRUCE:

Q. It is a ledger of Ellingwood & Cunningham? A. Yes.

Judge BRUCE: I ask to have that marked for identification.

(Ledger marked Exhibit 8 for identification.)

Q. I show you another book. Please state what that is? A. A ledger.

Q. What number? A. Number 3.

Q. Of Ellingwood & Cunningham? A. Yes, it seems to be.

Judge BRUCE: I ask to have that marked for identification.

(Ledger marked Exhibit 9 for identification.)

Q. Now, there was a ledger known as ledger No. 5, was there not? We have now Nos. 2, 3 and 4. There was a ledger known as No. 5, was there not, which followed after No. 4? A. There must have been.

Q. Now you say there must have been; don't you recall that after they completed Ledger No. 4, that they discontinued numbering ledgers, and started the system with the loose leaf ledger? Will you please examine them and see if that is not true? Yes.

Q. I show you one of these loose leaf ledgers marked No. 6. Will you examine ledger No. 4, and see whether loose leaf ledger No. 6 does not follow ledger No. 4? A. I believe so; I would have to examine some of these accounts to see.

Q. Kindly do so? A. My answer is, yes.

Q. Now, will you look at loose leaf ledger No. 7 which I show you, and tell me whether or not that was a book kept by Ellingwood & Cunningham, and whether or not it does not follow in order of time loose leaf ledger No. 6? A. No. 8 here seems to follow No. 4.

Q. Which one follows No. 8? A. I could not tell. They were probably put into either one, where there was a transfer ledger.

Q. Loose leaf ledgers 8 and 7 and 6 were kept simultaneously; were they of the different accounts covering the same period of time, maybe often in either one of these loose leaf ledgers? The accounts would be in one ledger and transferred to another when the leaves were full.

Q. Now, besides the ledgers you kept a cash book and besides the cash book you kept two sets of blotters, did you not, one called the Clearing House blotter, and the other called Ex-Clearing House blotter? A. Yes, sir.

Q. What was entered in the Clearing House blotter? Trades which would be settled in the Stock Exchange Clearing House.

Q. What you would call stock transactions? A. Yes.

Q. Ex-Clearing House blotter, what would be entered there? Anything else.

Q. Now, in addition to that you kept a check book or check books? A. Yes, sir.

Q. With what institutions did the firm of Ellingwood & Cunningham have accounts? A. I don't know—I think the Hanover Bank.

Q. The Hanover National? A. Yes, I think so.

Q. The Bank of the State of New York? A. Yes, sir.

Q. Now, all moneys received would be entered either in the cash book or the Ex-Clearing House blotter, would they not? A. Yes.

Q. And all moneys paid out would be entered either in the cash book or the Ex-Clearing House blotter? A. Yes.

Q. All moneys received would be deposited in the bank and such deposits entered on the deposit sheets attached to the back of your check books; is that true? A. I did not keep those books; I don't know just how they kept them.

Q. Don't you recall that up to April 22nd, 1902, their method of bookkeeping was to enter the deposits in the back of the check book, but that subsequent to that time they kept a deposit book in which the deposits were kept? A. Yes, I think that is right.

Q. In this deposit book they kept practically a copy of every check deposited, did they not, substantially one? A. I did not keep that book.

Q. You have seen it, did you not? A. Yes; I have no doubt they did.

Q. Do you remember when you last saw that book? A. No, sir.

Q. Do you remember whether it was there when the firm filed a petition in bankruptcy in February, 1905; I am speaking now of the deposit book? A. I suppose it was there.

Q. If it had not been there it would have been a matter of note to you, would it not, as a matter of bookkeeping? A. I never handled that book.

Q. I know, but if a book of that character had disappeared and was not there, it would be a matter which you would have noted, would it not? A. Not that book, no.

Q. Who handled that book? A. I suppose the cashier.

Q. Who was the cashier? A. His name was Stow.

Q. What was his first name? A. Edgar.

Q. Where is he now? A. I don't know.

Q. Where was he when you last heard from him or saw him? A. He was with some insurance company, I have forgotten where.

Q. Here in New York? A. Yes.

Q. Don't you recall the company? A. I do not, no.

Q. When did you last see him? A. Some years ago.

Q. Do you know Mr. Louis Bedell? A. No, sir.

Q. Did you ever see him? A. Maybe I have seen him, no to know him, however.

Judge BRUCE: Mr. Bedell, will you kindly stand up?

(Mr. Louis Bedell thereupon stood up.)

Q. Do you recognize Mr. Bedell? A. I do not.

Q. I show you page 59 of ledger No. 4, and ask you whose account appears there? A. "L. Bedell."

Q. Now, when is the account opened as appears upon page 59? A. May 31st.

Q. What year? A. 1899.

Q. May 31st, 1899, is it not? A. Yes, it seems to be so.

Q. It is May 31st, 1899, isn't it? A. Yes.

Q. Now, prior to May 31st, 1899, Bedell had a joint account with G. T. Rogers and George Green, did he not? A. Yes.

Q. Which appears on page 57 of ledger No. 4? A. Yes. I do not know whether that is the same Bedell.

Q. Now, on May 31st, 1899, it appears from the account as recorded on page 59 in ledger 4 that Bedell owed Ellingwood & Cunningham as his share of this joint account which appears on page 57, \$4,932.85, does it not? A. It seems so, yes.

Q. Isn't it so? A. Yes.

Q. Doesn't it say so? A. Yes.

Q. The next entry on that account is on June 1st, 1899, from the Manhattan Pool Account, a charge of \$2,537.53, is it not? A. Yes.

Q. From which it would appear that Mr. Bedell prior to that time had a Manhattan Pool account, would it not? A. I don't know.

Q. That is, that he was in the Manhattan Pool from which there was charged a debit balance of \$2,537.53? A. I could not say as to that. There is a charge there I see in that account.

Q. On January 31st, 1900, the amounts due from Bedell were in total \$7,775.98, were they not? A. Yes.

Q. Due to Ellingwood & Cunningham? A. Yes, that seems to be the case.

Q. And that was transferred to miscellaneous sheet No. 1, was it not? A. Yes, sir.

Q. So that on the 31st day of January, 1900, the amounts due from Bedell to Ellingwood & Cunningham was \$7,775.98? A. Yes, sir.

Q. That was made up of losses from the Rogers, Bedell & Green account, and from the Manhattan Pool, the two amounts, \$4,932.85, and \$2,537.53, with the interest account? A. Yes, sir.

Q. Now, I show you sheet No. 2 of the miscellaneous, from loose leaf ledger. The first entry upon Bedell's account there is January 31st, 1900, from which you brought forward this debit balance of \$7,775.98, is it not? A. Yes.

Q. Now it does not appear from the books which I have shown you, or from any of the books here, that prior to January 31st, 1900, Bedell had had any individual transactions, does it? The only two transactions was his participation in the account of Rogers, Bedell & Green, and his losses in the Manhattan Pool, together with the interest charge? A. Yes, that is all you have shown me, I don't know whether there are any other accounts.

Q. Now, on April 9, 1900, Bedell bought 200 Transportation, did he not, 100 at $11\frac{7}{8}$, amounting to \$1,200, and 100 at $11\frac{5}{8}$, amounting to \$1,175. Is that right? A. Yes, sir.

Q. Now at that time he owed the firm of Ellingwood & Cunningham, \$7,775.98, did he not? A. It seems so, yes. Cunningham, \$775.98.

Q. Isn't it so as stated in the books there? A. Yes, sir, it is stated so here.

Q. Now it does not appear from the books there that any margin was deposited prior to this purchase of the 200 shares of Transportation on April 9, does it? A. I don't see it here, no, sir.

Q. But on the contrary he was indebted, as you have said, \$7,775.98. Is that correct? A. Yes, sir.

Q. Now, on April 17 he is credited with \$2,375, is he not? A. Yes.

Q. Do you recall, or is there anything to indicate whether that was paid in check or by cash? A. No, only what is here, that is all I can tell you.

Q. You cannot tell from the account as it appears upon the ledger whether it was paid in cash or by check? A. No, sir.

Q. I show you this book designated "Stock blotter No. 21." Is that one of the blotters of Ellingwood & Cunningham? A. Yes.

Q. In which would be entered the receipts or cash, would it not? A. Either there or in the cash book.

Judge BRUCE: I offer this book for identification.

(Book marked Exhibit 10 for identification.)

Q. Turning to the page of this book entitled April 17, 1900, I show you an entry there "Payment, 200 N. Y. Transportation, \$2,375, \$2,375, L. Bedell." That is an entry, is it not, for the receipt of \$2,375 which appears in Mr. Bedell's account on that date on this loose leaf from the loose leaf ledger? A. Yes, sir.

Q. Do you know where that money came from? A. No, sir.

Q. I show you a book, being check book from 22,001 to 23,000, and ask you if that was one of the check books of Ellingwood & Cunningham? A. Yes, sir.

Q. Now I show you an entry under the same date, April 17, 1900, "H. H. Vreeland, \$3,000, credit L. Bedell \$2,375," and ask you if that is not a credit for the \$2,375 which appears in the ledger account of Mr. Bedell and also appears in the blotter concerning which you have just testified? A. I don't know that, I didn't keep this book.

Q. Well, there appears under the date of April 17, 1900, in this cash book, or rather in this check book, the entry "Credit L. Bedell \$2,375"—"H. H. Vreeland, \$3,000, credit L. Bedell \$2,375"—isn't that correct? A. Yes, sir.

Q. Also "Credit L. Goodsall, \$300," and "G. T. Rogers \$300," making in all the \$3,000—isn't that correct? A. Yes, sir.

Q. Which means that on that date H. H. Vreeland paid in \$3,000 which was credited to these three men in these three amounts, does it not? A. Well, it seems so.

Q. Those entries in that book mean that, do they not, so far as the entries go? A. It seems so.

Q. It is so, isn't it, so far as the record of the book goes? A. Probably. I don't know anything about how he kept that book.

Q. I am not asking you about how he kept the book. I am asking you so far as these records go they show that H. H. Vreeland on that date paid in \$3,000 which were distributed to Bedell, Goodsell & Rodgers in the amounts named — isn't that correct? A. Well, I don't know.

Q. Do you mean you don't know that is what the books says? A. I don't know whether it means that, that is what it says.

Q. That is what it says — those entries are there, are they not? A. Yes, sir.

Q. Now turning your attention again to Bedell's account as it appears in the loose ledger sheet which is in your hand, on April 25, 1900 — on that date Bedell owed Ellingwood & Cunningham \$7,775.98, did he not, against which they held the 200 Transportation bought on April 19th? A. Yes, sir.

Q. Now on April 25, 1900, Bedell bought 100 Transportation at 12-7/8, amounting in all to \$1,300, did he not? A. Yes, sir.

Q. And on May 16, 1900, he is credited with \$125 from G. T. Rogers — is that correct? A. Yes, it says G. T. Rogers.

Q. Well, it says May 18, G. T. Rogers, \$125. A. Yes, sir.

Q. You are a bookkeeper, are you not? A. Yes, sir.

Q. That means that on May 18, Mr. Bedell was credited with \$125 from G. T. Rogers, does it not? A. Yes, I should say so. I posted this just as it was in the blotter.

Q. These are all the transactions which Mr. Bedell had up to that time, so far as the account appears in the ledger, are they not? A. Yes, sir.

Q. Now, still examining his account which you hold in your hand, you find that from May 18, 1900, to May 1st, 1901, an entire year lacking 18 days, Mr. Bedell had no transactions; is that correct? A. Yes, sir.

Q. Now on May 1st, still examining his account which you hold in your hand, May 1st, 1901, Bedell owed Ellingwood & Cunningham \$9,624.65, against which they held 300 Transportation? Is that correct? A. Yes.

Q. Now, on May 1st, 1901, he is credited with \$3,500, is he not? A. Yes.

Q. In cash or in check? A. It says cash.

Q. And in parenthesis it says "Special account," does it not? A. I enter cash and check the same way.

Q. It says cash, does it not? A. Yes.

Q. And in parenthesis it says "Special account," does it not? A. Yes.

Q. Do you remember from what source that money came, if it was paid by check whose check it was—it might have been either check or cash, it would be entered the same way you say? A. Yes, sir.

Q. I show you a book entitled "Stock blotter No. 1." Is that one of the blotters of the firm of Ellingwood & Cunningham? A. Yes, sir.

Q. I call your attention to an entry under the date of May 1st 1901, "Margin, \$3,500, 3,500, H. A. Robinson," over which is written "L. Bedell, special." That is an entry of the same \$3,500 which appears in the ledger, is it not? A. Yes, sir.

Q. There is a line drawn through the words "H. A. Robinson," is there not? A. Yes, sir.

Q. What did that mean? A. I don't know.

Q. Didn't it mean that that money came from Robinson, and was credited to Bedell? A. No, I should not say so—I don't know.

Judge BRUCE: I offer this book for identification.

(Book marked Exhibit No. 11 for identification.)

Q. I show you a check book entitled "April 2, 1901, to May 3 1901." Was that one of the check books kept by Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I offer this book for identification.

(Book marked Exhibit No. 12 for identification.)

Q. Now under the same date of May 1st, 1901, there appears does there not, a deposit, H. A. Robinson, \$3,500, Morton Trust Company? A. I don't know whether that is a deposit that you have there. I see H. A. Robinson.

Q. It so appears, does it not? A. Yes, sir.

Q. A deposit, H. A. Robinson, Morton Trust Company, \$3,500? A. If this is a deposit book, yes.

Q. Examine it and tell me whether it is a deposit book or not. That is a check book in the back of which are the leaves on which the deposits are kept. A. Yes, sir.

Q. No doubt about it. So that so far as we have gone the only credits to Bedell's account are the \$2,375 from Vreeland, \$125 from G. T. Rogers and \$3,500 from Robinson — isn't that correct? A. Yes.

Chairman MERRITT: The Committee will stand adjourned until 11 a. m. to-morrow at this place.

Adjourned until Thursday, September 8, 1910, at 11 A. M.

SECOND PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, *September 8th*, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, ESQ., { *Assistant Counsel*.
ISIDOR J. KRESEL, ESQ., }

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: We will recall Mr. Carpenter.

GEORGE CARPENTER, recalled.

Examination by Judge BRUCE:

Q. Mr. Carpenter, in answer to the last question which I propounded to you yesterday, which was as follows: "No doubt about it. So that so far as we have gone, the only credits to Bedell's account are the \$2,375 from Vreeland, \$125 from G. T. Rogers and \$3,500 from Robinson, is not that correct?" Your answer was "Yes." A. That is, to May 1st.

Q. Now, as against this, Ellingwood & Cunningham held 300 shares of Transportation, which cost \$3,675, is not that correct?

A. It cost on this sheet that I have — I presume that is correct, \$3,675.

Q. Now, the next item appearing in Mr. Bedell's account is on May 3rd, 1901, is it not? A. Yes.

Q. And on that date, he drew out \$3,500, did he not? A. The memorandum says, a draft account.

Q. That is, \$3,500 was charged? A. Charged.

Q. Transferred, rather, from his general account to his draft account? A. This would indicate that, yes.

Q. I show you another page from the leaf ledger, and ask you what it is? A. It is L. Bedell, draft account.

Q. That sheet is Mr. Bedell's draft account, is it not? A. Yes.

Q. Now, this account, that is, this draft account, is opened on May 3rd, 1901, to the credit of \$3,500, is it not? A. Yes.

Q. Which is a transfer from the regular account, is it not? A. Yes.

Q. Now, this \$3,500, that was on the 3rd of May transferred to his draft account he received on the 1st of May, did he not?

A. Well, I don't know what that is meant to be — that same amount.

Q. Well, he did receive \$3,500 on the 1st of May? A. Yes.

Q. And on the 3rd of May he transferred it to his draft account? A. Well, it was transferred on that day. I could not tell whether it was meant to be that item or not.

Q. See if I am correct in this: On the first of May he is credited with \$3,500? A. Yes, sir.

Q. On the 3rd of May there was transferred from his general account to his draft account, \$3,500? A. Yes, sir.

Q. And that was the first item on his draft account, was it not? A. Yes, sir.

Q. Now, what is the next item on his draft account? A. There are two there on May 3rd.

Q. Take the credit side? A. That is \$5,000.

Q. \$5,000, and what is the entry preceding the credit of the \$5,000? A. C. R. — a couple of letters — I don't know.

Q. Charge G. T. R., is it not? A. Either that or check G. T. R.

Q. Either check G. T. R., or charge G. T. R., is not that right?

A. Probably.

Q. Do you know who G. T. R. was? A. That was copied from the blotter. No.

Q. Do you know who it was, G. T. R.? A. No.

Q. Do you know whose initials those are? A. No, sir.

Q. I show you a book entitled Cash, April 22 to October 30, 1901, and ask you if that was one of the cash books of Ellingwood & Cunningham? A. Yes.

Q. I show you an entry on page 13, under date of May 3, 1901, L. Bedell, draft from G. T. R., \$5,000, that appears, does it not, and before "from," the letters "Ck.?" A. Yes, sir.

Q. That would indicate a transfer of \$5,000 from G. T. R. by check to the account of L. Bedell, would it not? A. That is probably a check.

Q. Probably a check deposited? A. Yes.

Q. Now, on the opposite page, you find an entry, do you not, under the same date, whereby Rogers is charged with \$5,000 transferred by check to the account of L. Bedell? A. Yes, sir.

Q. Now, does that refresh your recollection that this \$5,000 which is credited to Bedell in his draft account on May 3rd, came from Mr. Rogers? A. Yes, that is probably what that transfer means.

Q. Now, on that date, Mr. Bedell's total credits in his draft account, amounted to how much? A. \$7,800.

Q. Are you looking at his draft account? A. On May 3rd.

Q. How much was the credit account? A. \$8,500.

Q. Now, look over on the debit side of his draft account, and see if you don't find that between May 3rd, 1901, and June 5th, 1901, Mr. Bedell withdrew from this draft account in various amounts \$6,826.25, is that correct? A. Yes.

Q. Now, can you tell me how that was drawn out, whether by check or in cash? A. I could not say positively; it says draft, in here, but it might have been cash and might have been a draft.

Q. See if I can refresh your recollection. Now, between those dates, May 3rd and June 5th, these withdrawals were as follows,

were they not? May 3rd, \$700; May 20th, \$126.25; May 21, \$2,000; June 3rd, \$2,500; June 5th, \$1,500. Is that correct? A. Yes, sir.

Q. I show you another book entitled Cash, April 22 to October 30, 1901. Just one moment — I will go back and have that marked for identification. I showed you this before, and will you have it entered on the record back where it was entered before, that it was marked for identification with the number given it now.

Said book is marked for identification, Exhibit 13.

Q. I show you Exhibit No. 13 for identification, which is one of the cash books of Ellingwood & Cunningham and ask you to look on page 31, and see if you find an entry there, Louis Bedell, draft, cash \$2,000. A. Yes, sir.

Q. Does that refresh your recollection that the \$2,000 which was withdrawn on May 21st, was in cash? A. Well, I have no recollection of it now. I posted it in that book, you see.

Q. You undoubtedly posted it correctly, did you not? A. Yes, sir.

Q. Then he did on that date, withdraw \$2,000 in cash? A. It seems so from that book. I would not say positive.

Q. Don't you know it to be a fact? You made the entries at the time, did you not? A. No, I did not make those entries. I posted them.

Q. You posted them correctly? A. Yes, sir.

Q. Well, it was correctly posted, at least? A. Yes, sir.

Q. In whose handwriting was this entry from the cash book? A. I don't know. It might have been the cashier, or it might have been his assistant.

Q. Well, don't you know the handwriting of the cashier? A. It does not look like his handwriting. It might have been his assistant.

Q. Don't you know his handwriting and his assistant's handwriting? A. I ain't sure. I would not be sure of it unless I saw some other writing.

Q. Now, just look through this book. It seems to be the cashier's writing, does it? A. I could not tell you.

Q. Does it seem to be his assistant's? A. I could not tell.

Q. Who was his assistant? A. Mecklen.

Q. When did you last see him? A. He died.

Q. How long ago? A. I don't know that that is his. I think it is, because it is not the cashier's.

Q. Mecklen, how do you spell it? A. M-e-c-k-l-e-n.

Q. Is that correct? A. Yes, sir.

Q. I will endeavor to refresh your recollection with regard to the withdrawal on June 3rd, \$2,500, as to whether it was by draft or by cash? A. It says draft here.

Q. I show you Exhibit No. 13, page 47, and ask you to look at the entry on that page. Does it not read "Louis Bedell, draft, \$2,500?" A. Yes sir.

Q. That withdrawal, then, was undoubtedly by draft, was it not? A. It seems to be.

Q. Have you much doubt about the correctness of the books of the firm of Ellingwood & Cunningham? A. Well, only that it should be draft for all cash taken out. I presume you mean whether it was a draft that came through the window or cash handed out of the office. I could not tell.

Q. It might be cash, then, although it said draft? A. You mean as between the difference between a check given at the time, or cash. I could not tell by the books which is the case.

Q. That is, he might have cashed a draft on Ellingwood & Cunningham? A. Or might have been a check. I could not tell which is the case.

Q. But whichever way is the case, it was taken out, was it? A. It was taken out, yes.

Q. Now, referring again to Mr. Bedell's draft account, it shows, does it not, that by December 19th, 1901, he had withdrawn the entire \$8,500, and overdrawn the account to the extent of \$30.25? A. Yes.

Q. Now returning to his general account. You find the next item that on May 3rd, 1901 — speaking now of Mr. Bedell's account — that he was credited with \$2,500, was he not? A. Yes.

Q. And that was the same date on which he is credited in his draft account with the five thousand dollars? A. Yes.

Q. Do you know from whom you received the \$2,500? A. No.

Q. Doesn't it say right directly in the account from whom it was received? A. It is probably that same transfer, yes.

Q. What does it say in the account? A. G. T. R.

Q. "Check G. T. R. \$2,500?" A. Yes, sir.

Q. That was G. Tracy Rogers, was it not? A. Might I look at that book a minute (witness examines book)? Yes.

Q. So that it appears that on the 3rd of May he received from Rogers \$7,500, \$5,000 and \$2,500? A. Yes.

Q. Now the next item in his general account is the receipt for him of 200 shares of Transportation on May 8, is it not? A. Yes, sir.

Q. What does that mean? Does it mean that he bought in 200 shares of Transportation or that he bought 200 shares of Transportation? A. It indicates that he received it for his account. I don't know whether he bought it in or not.

Q. But it indicates that you received it. There is no indication of any purchase or the price if purchased? A. No, sir.

Q. And there is no indication that Ellingwood & Cunningham bought it for him? A. Not that day — they might have bought it previously.

Q. There is no entry previously in his account that they purchased that, is there? A. No, not in this account.

Q. Do you know where he got that 200 shares of Transportation? A. No, sir.

Q. Do you know whether he paid for it or not? A. No, sir.

Q. If Ellingwood & Cunningham had received it from other parties for him their books would show it, wouldn't they? A. I presume so.

Q. In the ordinary course of bookkeeping and their methods it would show, wouldn't it? A. It ought to.

Q. Now referring again to his general account between May 8 and October 21, 1901, there were no transactions, were there?

A. I haven't got the sheet here for May 29th. (Counsel hands sheet to witness, who examines it.) No, sir.

Q. Now how much did Mr. Bedell owe Ellingwood & Cunningham on October 21, 1901 — we will say September 30th —

I will change that to September 30, 1901? A. He owed \$7,309.43, against which there was 500 Transportation.

Q. Against which they held 500 Transportation? A. That is, it appears so from this account, I don't know whether he had any other account or not.

Q. Three hundred of it he had bought, which cost \$3,675? A. Yes, sir.

Q. And 200 he had deposited — is that correct? A. Yes, sir.

Q. Now look to the credit side of Mr. Bedell's account. On October 21st he is credited with \$7,000, is he not? A. Yes, sir.

Q. October 21st, 1901? A. Yes, sir.

Q. That is entered as the proceeds of the sale of 500 Transportation; isn't that true? A. Yes, apparently, it doesn't say whether it was sold or delivered.

Q. What does it say? A. It says 500 Transportation, \$7,000.

Q. If you see an entry in a book, 500 Transportation, \$7,000, what would you say it would indicate? A. It would indicate that the stock was delivered unless possibly the price had been omitted through error, the price it was sold at.

Q. The amount received for the stock is there, is it not? A. Yes, sir.

Q. Then that would convey to your mind the suggestion, at least, that on that date 500 Transportation had been sold for \$7,000, wouldn't it? A. Either sold or delivered, yes.

Q. Either sold or delivered and charged at the price of \$7,000; is that correct? A. Yes.

Q. Does it appear that there was any commission charged for the sale if a sale was made? A. I can't tell that from this sheet.

Q. Where would that be charged? A. That would be charged in the blotter.

Q. Wouldn't it be entered subsequently in his account in the ledger? A. Just the net amount.

Q. Do you find it there? A. Yes, \$7,000.

Q. Do you find any commission charged? A. I can't tell from this sheet, the commission is charged in the blotter.

Q. Would the amount of the commissions be transferred from the blotter to the ledger? A. No.

Q. It would be deducted from the amount of the sale, would it? A. Yes.

Q. But there is no price given at which the 500 Transportation was sold, is there? A. No.

Q. Where did this \$7,000 come from with which he is credited on October 21st, 1901? A. I don't know.

Q. Don't know? A. No, sir.

Q. There is nothing to indicate to whom the stock was sold? A. No, sir.

Q. Where would the entry be which would show from whom the \$7,000 came? A. In the blotter.

Q. In the blotter for that date, would it not? A. Yes.

Q. But unfortunately that blotter is missing. Now if Ellingwood & Cunningham on that date received \$7,000 for Bedell with which he was credited that would appear in their account, would it not, as a deposit? A. Yes.

Q. And that would appear in the deposit book, would it not, or the list of deposits kept in the back of the check book? A. Yes.

Q. But unfortunately that check book is missing. Now, searching your recollection, Mr. Carpenter, don't you know as a matter of fact — now please answer after some reflection — don't you know as a matter of fact that on October 31, 1901, Ellingwood & Cunningham did not sell 500 shares of Transportation for Mr. Bedell, but that as a matter of fact on the 7th of May previously they did deliver the 500 shares of Transportation together with 1,000 other shares of Transportation to Ex-Senator Goodsell? A. No, sir, I don't know.

Q. I show you a receipt reading as follows: "Ellingwood & Cunningham, 41-43 Wall Street, New York, May 7, 1901. Received from Ellingwood & Cunningham 1,500 New York Transportation," following which is given the number of the certificates, and signed, "Louis F. Goodsell," and ask you if that refreshes your recollection? A. No, sir, I had nothing to do with handling that.

Judge BRUCE: I ask to have this receipt marked in evidence.

(Receipts received and marked in evidence Exhibit No. 14.)

Q. Now 500 shares of Transportation at 14 would figure just \$7,000, wouldn't it? A. Yes.

Q. Now, again asking you to reflect, don't you know as a matter of fact as I stated before, that they did not on October 21st sell the 500 Transportation for Mr. Bedell, but that previously on May 7, this 500 shares of Transportation, together with one thousand other shares, had been delivered to Louis F. Goodsell in return for a draft of \$19,600? A. No, sir.

Q. I show you a letter — this is one of the letter books of Ellingwood & Cunningham, is it not (showing book to witness) entitled "Firm letters from October 21st, 1901, to December 18, 1901?" A. Yes, sir.

Judge BRUCE: I ask that that be marked for identification.

(Letter book received and marked in evidence Exhibit No. 15.)

Q. I read you copy of a letter found on page 2, October 21, 1901, "Hon. Louis F. Goodsell, Highland Falls, New York. Dear Sir: Yours of the 21st instant received enclosing draft for \$19,600 in payment of 1,400 shares of New York Transportation at 14. We received this money as follows: Hon. S. F. Nixon, 500, \$7,000, Louis Bedell, 500, \$7,000, J. T. Rogers, 100, \$1,400, Hon. J. P. Alds, 100, \$1,400, A. E. Baxter, 200, \$2,800. We regret very much to hear of the"—well, that refers to a personal matter in regard to a death of a member of the family, Mr. Goodsell. The letter is signed, "Sincerely yours, Ellingwood & Cunningham. Dictated, J. W. C." I ask you if that refreshes your recollection as to the facts connected with that transaction. A. No, sir, I haven't any recollection and probably never saw that.

Judge BRUCE: I offer this letter in evidence.

(Letter received and marked in evidence Exhibit No. 16.)

Q. Do you know where that \$19,600 came from? A. No, sir.

Q. If it was received by Ellingwood & Cunningham and deposited for them it would appear in the deposit book, would it not? A. Yes, it ought to.

Q. Of that date? A. Yes, sir.

Q. But unfortunately that is missing. Now referring again to the general account, on October 21st, after Mr. Bedell's account had been credited with this \$7,000 he still owed the firm \$309.43,

did he not? A. Yes, sir. He may have had a special account — according to this account.

Q. Did he have a special account? A. I don't know of any.

Q. Do you know of any? A. No, sir.

Q. We have been unable to find any in all the ledgers? A. I don't know that there was any.

Q. If there was a special account it would appear in the ledger, would it not? A. Yes, sir, I didn't know that there was that draft account.

Q. Now, on that date, October 21, 1901, when he was credited with this \$7,000 he drew out \$2,500 in cash, did he not? A. Yes.

Q. Now was that drawn out in actual cash or by draft? A. I cannot tell.

Q. It says draft, does it not? A. Yes.

Q. Now, again referring to the account, you find no transactions, do you, between October 21, 1901, and October 22, 1902, except that interest on balances is charged — isn't that correct — and on April 28, 1902, Mr. Bedell is charged with \$1,954.39 as his share of the debit balance from the Rogers, Bedell & Green account — is that correct? A. It is charged there.

Q. There are no other transactions for the entire year and a day except his being charged with interest and the debit from the Rogers, Bedell & Greene account, the \$1,934.39? A. That is right.

Q. Now on October 22nd, 1902, Bedell owed Ellingwood & Cunningham \$5,342.33, did he not? A. On October 21st, do you mean?

Q. On the 21st — I will change that to the 21st. Now on October 22, 1902, Bedell is credited with \$5,000, is he not? A. Yes, sir.

Q. Where did that come from? A. I cannot tell.

Q. If they received \$5,000 for Mr. Bedell's account it would appear in the deposit book, would it not? A. If it was a check, yes.

Q. But unfortunately that deposit book is missing. Referring again to his general account. On October 27th of the same year he is credited with \$600, is he not? A. Yes.

Q. Do you know where that came from? A. No, sir.

Q. I will see if I can refresh your recollection. I show you a book entitled, "Cash, May 15 to December 8, 1902." Is that one of the cash books of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I ask that that be marked for identification.

(Book marked for identification Exhibit 17.)

Q. Now, referring to page 155 of Exhibit No. 17 for identification, under the date of October 27, 1902, you find an entry "William Snyder, credit Louis Bedell, cash, \$600," do you not? A. Yes.

Q. That would indicate that that \$600 was received from William Snyder, would it not? A. It might indicate that, I would not say positively.

Q. What would that indicate? Would it mean what it said? If it said "William Snyder, credit Louis Bedell, cash \$600," would that not indicate that Ellingwood & Cunningham received from William Snyder for the credit of Louis Bedell \$600? A. I couldn't say that, it might have been Snyder's check given by Bedell.

Q. Well, in any event there was a credit of \$600 to Bedell from Snyder? A. The name is there in some way, but I don't know in just what way he had to do with it.

Q. How long have you been a bookkeeper? A. About ten years.

Q. You understand, I presume, the elementary principles of it? A. Yes, sir.

Q. And you understand the English language? A. Yes, sir.

Q. The entry in the cash book, if it said "William Snyder credit Louis Bedell, \$600," would indicate that \$600 had been received from Snyder to Bedell, would it not? A. It might have been his check to Bedell.

Q. Well, however, it was received, it passed from Snyder to Bedell through Ellingwood & Cunningham, did it not? A. I could not say.

Q. Do you know who William Snyder is? A. No, sir.

Q. Did you ever hear of him before? A. I don't recollect

the name, I probably saw it at the time I posted it, but I don't remember it.

Q. Now look on the other side of the account. You find, do you not, that on October 27 of that year Mr. Bedell drew out \$600 in cash, being the same date? A. Yes, sir.

Q. Do you know whom that money was from? A. No, sir.

Q. I show you a book marked "Stock Blotter," October 7th, 1902, to February 2nd, 1903, at that time that was one of the blotters of Ellingwood & Cunningham? A. Yes, sir, I think so.

Q. Was it or wasn't it? A. Yes.

Q. If it was, say yes? A. Yes.

Judge BRUCE: I ask that it be marked for identification.

(Marked Exhibit 18 for identification.)

Q. Is this blotter in your handwriting? A. No, sir.

Q. Did you post from this blotter? A. Yes, sir.

Q. Referring to Exhibit 18 for identification, being the blotter referred to, I show you an entry under the date of October 27th, 1902. You find an entry, do you not, \$600, William Schneider, charge L. Bedell? A. Yes.

Q. Who kept this blotter? A. The cashier.

Q. What was his name? A. Stow.

Q. That would indicate that William Schneider had received \$600 upon that date, which was charged to L. Bedell, would it not? A. Yes.

Q. It says \$600, William Schneider, charge L. Bedell. Does it mean what it says? A. It looks to me as if it was charged to Schneider by mistake; I would not say; I don't know that.

Q. There is nothing to indicate there is any mistake. There is no mark on it. It is marked \$600, William Schneider, charge L. Bedell, isn't it? A. Yes.

Q. I show you a book, one of the check books, from September 26th, 1902, to November 10th, 1902, and ask you if that is one of the check books of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I ask that it be marked for identification.

(Marked Exhibit 19 for identification.)

Q. Referring to the book just marked for identification, being No. 19, under the date of October 27th, check No. 39,741, October 27th, 1902, National Bank of — what? A. North America.

Q. North America? A. Yes.

Q. William Schneider \$600; that would indicate that a draft or check was drawn by Ellingwood & Cunningham on that date to order of William Schneider for \$600, wouldn't it? A. That indicates it was drawn on the National Bank of North America.

Q. And charged to what account? A. Account of William Schneider.

Q. \$600, was it not? A. Yes.

Q. That was on the same date, wasn't it? A. Yes.

Q. So that so far as this record goes, it indicates that Bedell received from William Schneider on October 27th, 1902, \$600, and paid it to him on the same day, does it not? A. That record indicates that a check, or Schneider's draft — I don't know about the credit.

Q. That would indicate that this money apparently came in from William Schneider but was credited to Bedell, and on the same day was paid out to Schneider? A. It was paid to the North America Bank, apparently Schneider's draft.

Q. Certainly, the check was drawn on the bank, but for Schneider, wasn't it? A. Yes.

Q. No question about it. Do you or do you not know that at that time William Schneider was a member of the Railroad Committee of the Assembly of which Mr. Bedell was chairman representing some Assembly District in Erie county? A. No, sir, I do not.

Q. I show you the Legislative Manual for 1902, and ask you to look on page 545, and see if it does not appear, William Schneider, Erie, in the list of the members of the Assembly? A. Yes.

Q. And that in the list of the Assembly Committees of the same year and the same book it does not appear that he was a member of the Committee on Railroads? A. Yes.

Q. Now, referring again to Mr. Bedell's general account, notwithstanding this transaction on October 27th, Bedell still owes Ellingwood & Cunningham \$342.33, does it not? A. Yes, sir.

Q. Now, on that same date in which he drew this \$600, Bedell draws \$4,450, does he not? A. Yes, sir.

Q. How was that drawn; in cash, was it not? A. You mean the difference between cash and a check?

Q. It says "Cash" on the account, does it not? A. Yes, sir.

Q. Referring again to the cash book, Exhibit No. 17 for identification, page 155, you find an entry there, do you not, under the date of October 27th, 1902, L. Bedell, draft, cash, \$4,450? A. Yes, sir.

Q. I show you check book entitled July 10th, 1902, to December 19th, 1902, and ask you if that was one of the check books of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I ask to have it marked for identification.

Marked Exhibit 19 for identification.

Q. Referring to the stub of check A-8, 614, under that date, you find "Cash, draft L. Bedell, \$2,450, bal. paid from box," do you not? A. B-a-l, yes.

Q. That would indicate that they had drawn \$2,450 cash, and that the balance had been taken from the cash box, would it not? A. I don't know what he meant by that.

Q. You had a cash box, did you not? A. Yes, sir.

Q. You had a cash box, did you not? A. Yes.

Q. In which you kept cash? A. Yes, sir.

Q. And if it said that L. Bedell \$2,450 balance from box under that same date, it shows that he drew \$4,450, and would indicate that that much had been drawn from the bank and the rest of the balance paid from the cash box? A. I suppose that is what it means, yes, sir.

Q. Do you know where the returned voucher is for that check? A. Probably with the other vouchers.

Q. Unfortunately, it is not. It is missing. On the same date, referring to Exhibit 19 for identification, being a check book, 10 find under the stub October 27th, 1902, \$39,752 — a check drawn for cash \$2,000, do you not? A. Yes.

Q. Drawn to petty cash? A. Yes.

Q. Now, referring again to his general account on October 30th, 1902, Bedell also drew in cash \$750, did he not? A. Yes.

Q. Making his indebtedness at that time, to Ellingwood & Cunningham, \$5,575.22? A. Yes, that's right.

Q. Is that correct? A. Yes.

Q. Now, passing along on the general account, we find on November 6th, still 1902, Mr. Bedell is credited from G. T. Rogers, \$3,000, is he not? A. Yes.

Q. And on the very next day, he draws out, November 7th, 1902, cash \$2,800, does he not? A. Yes.

Q. Do you know where that \$3,000 came from, that is, where Mr. Rogers got it from? It says, G. T. Rogers? A. No, sir, only what it says here.

Q. It is entered there from G. T. Rogers? A. Yes.

Q. Don't you know, as a matter of fact, that on October 27th, 1902, Ellingwood & Cunningham received from Mr. Henry Robinson, 621 Broadway, New York, \$3,000? I show you a book entitled Letter Book, August 2nd, 1902, to August 4th, 1903, and ask you if that is one of the letter-press copy-books of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I ask that that be marked for identification.

Marked for identification, Exhibit No. 20.

Q. Referring to page 128 of the book just shown you, which has been marked Exhibit 20 for identification, I find the following letter: "October 27th, 1902. Mr. H. Robinson, 621 Broadway. Dear Sir: Beg to acknowledge the receipt of your check this day for \$3,000, which I passed to the credit of our mutual friend. Very truly yours. J. W. Cunningham. Dictated J. W. C." Does that refresh your recollection? A. No, sir. I never had any recollection at all of these things. I probably never saw that.

Q. Do you know who our mutual friend referred to in the letter was? A. No, sir.

Letter marked in evidence, Exhibit No. 21.

Q. You will recall that the letter which I just read to you is dated October 27th, 1902. Now, referring to the same letter-book at page 147, I wish to know whether the letter, a copy of which is there recorded, refreshes your recollection as to this

transaction? "November 5th, 1902. Mr. G. T. Rogers, Binghamton, New York. My Dear Tracy: Yours of the 4th inst., received. The \$3,000 passed to the credit of your account on October 27th, we have transferred to the account of Louis Bedell. We herewith send you a memo of all credits to date. Note you are going to Buffalo to-morrow. You might just as well go out to William Jennings Bryan's territory, while you are about it, for we have his kind of a stock market here. Things are as blue as possible, and your prayers for a Republican victory have been answered the wrong way. Yours truly, J. W. C." A. I probably never saw that before.

(Said letter is marked in evidence as Exhibit No. 22.)

Q. This correspondence shows, therefore, that the \$3,000 which came from Robinson on October 27th, 1902, was passed to the credit of Bedell. That is correct, isn't it? That is what the correspondence shows? A. I have forgotten just what it was. I guess that's right.

Q. Now, referring again, showing you the account on the loose leaf ledger of G. T. Rogers, you find there, do you not, under the date of November 6th, 1902, to L. Bedell, \$3,000? A. Yes, sir.

Q. Now, referring again to Mr. Bedell's general account on November 7th, 1902, after this credit of \$3,000, his indebtedness was reduced to the sum of \$2,575.72, was it not? A. On November 6th, yes.

Q. Now, on November 7th, he withdrew in cash, \$2,800, did he not? A. Yes.

Q. Do you know how this was paid, in what denominations? A. No, sir.

Q. What denominations the bills were, you do not, do you? A. I don't know. I probably never knew, as it was posted this way.

Q. Referring to Exhibit 19 for identification, being one of the check books, and referring to the check numbered 39,975 under the date November 7th, 1902, you find, do you not, cash \$2,800, four \$500 bills and eight \$100, L. Bedell charged, credited cash? A. Yes.

Q. That would indicate that it was paid in four \$500 bills, and

eight \$100 bills, would it not? A. I don't know, I am sure. That is something I can't answer.

Q. Well, it is there, four \$500 and eight \$100, isn't it? A. Yes, sir.

Q. Referring again to his general account on January 23, taking that date, 1903, you find Bedell owed Ellingwood & Cunningham, \$5,375.72, did he not? A. Yes.

Q. Now, on that day, he is credited by cash with \$1,000, is he not? A. Yes.

Q. Do you know where this came from? A. No, sir.

Q. So far, we have been taking up this account, general account, item by item, have we not, as it appears? A. Yes.

Q. Referring to Exhibit 18 for identification, being one of the blotters of Ellingwood & Cunningham, under the date of January 23, 1903, you find, do you not, check G. T. R., L. Bedell? A. Yes.

Q. I misread it. Check, G. T. R., \$1,000, L. Bedell? A. Yes, sir.

Q. That would indicate that the thousand dollars with which he is credited on that date, came from G. T. R., would it not? A. Yes, sir.

Q. Those are the initials of G. Tracy Rogers, are they not? A. Yes, sir.

Q. Now, coming to the next item, February 6th, 1903, we find Bedell credited there from G. T. R., \$750, do you not? A. Yes.

Q. And on March 31st, he is credited from G. T. R., \$431? A. Yes.

Q. Referring again to this account which was kept by you in the ledger, was it not? A. Yes.

Q. From October 31, 1902, down to August 28th, 1903, although there are numerous items charged, there is nothing on the ledger to indicate what they were, is there? There is nothing there to indicate what they are, is there — there is no entry to indicate? A. Yes, a charge on the debit side indicates.

Q. I say, there appears numerous items on the debit side under various dates, but nothing to indicate what those items were, is there, on the ledger? A. You mean, whether they were paid in cash or in check?

Q. Yes. A. No.

Q. Or what they were paid for, or to whom they were paid, or whether they were interest charges or purchases? A. They were not interest charges.

Q. Well, there is nothing to indicate what they are, is there? A. The fact that there is a charge indicates that money was drawn out — that's all.

Q. Well, how it was drawn out, for what purpose, is not indicated there? A. No.

Q. On every other item on his account previous to that time, there is an indication of what the item was for, whether cash, draft, interest charge or purchase? A. Yes.

Q. Now, the account terminated, did it not, on February 15, 1905, the date on which the firm failed? A. Yes.

Q. And on that date, Mr. Bedell was indebted to Ellingwood & Cunningham in the amount of \$9,246.86? A. What amount did you say? The amount is \$7,065, according to this account.

Q. I will strike out that amount. I was reading without the credit balance. \$7,065.86, is that correct? A. Yes, sir.

Q. Against which they carried no stock whatever? A. That's right.

Q. Now, we have gone over this account, then, extending for nearly five years, have we not, during which time there were only three stock transactions, the purchase of 200 shares of transportation which was paid for by the check of H. H. Vreeland, and the purchase and a deposit of 200 shares of transportation, of which there is no record as to where it came from, is not that correct, so only two stock transactions and one deposit of stock, is not that correct? A. Yes, sir.

Judge BRUCE: Now, Mr. Chairman, I am ready to start in with a new witness, unless the Committee, before starting in with the witness, wishes to take a recess adjournment.

The WITNESS: I wish to make a correction in regard to your last question.

Q. There were only three stock transactions, excepting the transfer from the Rogers, Bedell and Green account on April 28, 1902, a debit balance, and Bedell's account of \$1,954.39? A. That represents his stock transactions carried in that account.

Q. The stock transactions to which I have referred, are the only individual stock transactions? A. All that appear in his account. These were just as much his stock transactions as though put in his account.

Q. Let me see if I understand it. Mr. Bedell's individual account extended over a period of nearly five years, did it not? A. I think that's about right, yes.

Q. And during those five years, as far as his individual transactions are concerned, not taking into consideration any transfers of debit balances from joint accounts, there were only three stock transactions, were there? A. Yes, sir.

Judge BRUCE: Now, Mr. Chairman, if the Committee wishes to take a recess now, that would be agreeable to counsel, or we will start in with a new witness.

Chairman MERRITT: You don't think you could get through with the next witness?

Judge BRUCE: No, I could not get through with the next witness in a half hour.

Chairman MERRITT: All right. All witnesses will hold themselves liable to respond at the call of the Counsel without any notice. I don't know that I need to give that notice at each hearing. For the reason that counsel has given, the Committee will stand adjourned until 2 o'clock.

Recess until 2 p. m.

AFTER RECESS.

2 P. M.

LOUIS BEDELL, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Bedell? A. My official residence is Goshen, New York; I have been living for some time past at the Hotel Gramatan, Bronxville.

Q. What is your present occupation A. The legal profession.

Q. Have you offices in the city of New York? A. I have connection with offices at No. 5 Nassau street.

Q. Do you have an office in Goshen, New York? A. I do not, not now.

Q. You previously had? A. I had up until — I have forgotten what year, but in 1897 I first went into the law firm of Lexow, McKellar & Wells, and kept an office in Goshen for two or three years subsequent to that time.

Q. You were previously a member of the Legislature of the State of New York, were you not? A. Yes, sir.

Q. During what years, please? A. I was elected first in 1895.

Q. From what district? A. The second district of Orange county.

Q. Will you just give me, Mr. Bedell, your legislative experience — you served a number of years, did you not? A. I was elected in 1895 and served in the Legislature of 1896 and 1897, and was defeated in 1897 in the fall, was elected again in the fall of 1898, served in the Legislature of 1899, 1900, 1901, 1902, 1903, 1904 and 1905, and in January of 1906 I was taken blind, practically blind, and was excused from further service in the Legislature during that year.

But you were a member, of course, of the Legislature of that year? A. I was a member.

Q. That terminated your service? A. That terminated my service.

Q. And you have held no public office since? A. I have not.

Q. For how many years during your service in the Assembly were you on the Committee on Railroads? A. I think continuously from 1899 up to and inclusive of 1905.

Q. And for how many of those years were you chairman of the committee? A. Of Rules?

Q. No, of the Committee on Railroads, the chairman? A. I was chairman of the Committee on Railroads for the same period of time.

Q. During what years were you a member of the Committee on Rules of the Assembly? A. That was your first question, Mr. Bruce.

Q. Well, I intended to refer to Railroads first? A. I was

the chairman of the Committee on Railroads from 1899 to 1905 inclusive, and also a member of the Committee on Rules for the same period.

Q. Now, during those years which you served as a member of the Committee on Rules, under the rules of the Assembly ten days before the date fixed by joint resolution for adjournment the Committee on Rules took full charge of the calendar, did they not? A. That was the rule of the Assembly.

Q. And all bills that were placed upon the day calendar had to be placed on there by action of the Committee on Rules?

A. The Committee on Rules reported all bills as a special order upon second and third reading. That applied to all bills reported from the Committee on Rules, and they took precedence over all other bills.

Q. Are you acquainted with Mr. G. Tracy Rogers? A. Very well.

Q. How long have you known him? A. For many years.

Q. How long would you say the acquaintance had extended?

A. Well, at least fifteen or sixteen years.

Q. You have known him intimately, have you not? A. Very.

Q. You knew him during the years when he was president of the Street Railway Association of the State of New York? A. I did.

Q. And you knew of his activities as president of that association in connection with legislation in which the members of the association and the association itself were interested? A. I did.

Q. And Mr. Rogers, during your membership in the Assembly, was present very much of the time during each session, looking after the interests of bills affecting traction companies, was he not? A. He usually appeared there almost every week while committee hearings were being held.

Q. And during the days of the week that committee meetings were not held he was frequently in Albany, was he not, looking after the interests of the association and its members? A. I think his presence in Albany was almost exclusively confined to the days that committee meetings were held, but I could not answer that definitely.

Q. It was a fact, was it not, that very frequently on days when

there were no committee meetings Mr. G. Tracy Rogers was present in Albany attending to the business connected with the Street Railway Association? A. I assume that is true.

Q. Were you also acquainted with Mr. George E. Green, ex-senator from the Binghamton district? A. Very well indeed.

Q. You have known him for many years? A. I should say sixteen or seventeen years, possibly not quite so long. I knew him long prior to his being a Senator of the State of New York.

Q. You were acquainted also, were you not, with J. W. Cunningham of the firm of Ellingwood & Cunningham, brokers, in New York? A. Yes, sir.

Q. When did that acquaintanceship begin? A. That acquaintanceship began upon the introduction to Mr. Cunningham of myself by Mr. Rogers.

Q. Can you give me approximately the year? A. Well, I should say that it was 1897 or 1898, somewhere along there.

Q. And from that time until the time when the firm went out of existence by its failure, February 15th, 1905, you had continuous business relations with him, had you not? A. To some extent, yes.

Q. You were present yesterday when Mr. Rogers was testifying? A. I was.

Q. And you were present when Mr. Carpenter testified, the bookkeeper of Ellingwood & Cunningham, yesterday and to-day? A. Yes, but I could not hear what he stated.

Q. Could you hear any part of it? A. Some portions.

Q. And I take it, therefore, that you are partially familiar at least with his evidence? A. Partially.

Q. Now, Mr. Bedell, if you have any statement to make with relation to the evidence given in the hearings had so far by the committee, I want, on behalf of the committee now, to offer you the widest opportunity to make any statement you wish to make in regard to any evidence that has been produced so far as it affects you? A. Well, Mr. Bruce, and Mr. Chairman and gentlemen of the Committee, I have not had an opportunity to make an examination of the books of the firm of Ellingwood & Cunningham. I have had furnished to me by Mr. Cunningham the statement of an account which was started under my individual name,

under the date of January 31st, 1900, and I assume that this is a transcript from the books of Ellingwood & Cunningham.

Q. Just a moment, Mr. Bedell, and I will show you the original sheet. I show you, Mr. Bedell, three sheets taken from the loose-leaf ledger of Ellingwood & Cunningham, where your individual account is recorded. I placed them in the order in which they came chronologically. (Witness examines sheets.) A. That seems to agree with the sheet that I have here as far as it goes.

Q. Well, will you use the original, please? A. I assume that this is correct, it was undoubtedly furnished from your office. The first I saw of this was day before yesterday. I think Mr. Cunningham made an application to have an extract made from the books of the account. I have not seen any extract of the account which has been designated as Rogers, Bedell & Green. I would state when the account of Rogers, Bedell & Green was first opened I have no distinct recollection, but it was a joint account in which I think Mr. Cunningham also had an interest, and that account was operated, I might say, I think by Mr. Rogers and by Mr. Cunningham, and resulted very disastrously, and due, I think, to the fall in the stock market that came from the panic created by the death of Ex-Governor Flower, so that when that account was to some extent closed, and my first account was opened on January 31st, 1900 —

Q. Am I correct, Mr. Rogers? There were no items in that account after the date when your individual account was opened and when your debit balance, or your share of the debit balance of that account was transferred and brought over to your individual account, together with your debit balance in the Manhattan Pool account? A. That I cannot answer without reference to the account itself. I have no distinct memory on the subject.

Q. Just one moment, and I will endeavor to provide you with the original of that account.

(The witness and Judge Bruce examine the books.)

A. No item that I have been able to discover except under April 26, 1902, I am charged with \$1,954.34 from Rogers, Bedell & Green, so that there was a further charge. So that my account starts first on January 31, 1900, with a loss to me in the specula-

tive account of \$7,775.98, and then I am further charged in 1902 with \$1,954.39 more, making a total of approximately \$10,000. I have figured up the interest that I was charged with, and the interest on my account approximates \$2,232.50. So that there was a total loss to me so far as the speculative account was concerned of approximately \$12,000.

As to this speculative account I wish to state that the operations under that account were not conducted by me, and exceeded very greatly what I would have myself authorized had I been present when the transactions occurred. I think that if you will interrogate Mr. Rogers and Mr. Cunningham you will find that both of them recognized the fact that I was not a party practically to these large negotiations. That is, that a lot of the transactions that occurred were without my knowledge or without my consent. However, inasmuch as it had been done in good faith by them, believing probably that we would all make money, which unfortunately we all did not — all lost money, I never raised an objection to my account, when it was personally opened, being charged with these different amounts, it being understood that Mr. Rogers and Mr. Cunningham, if the opportunity offered, would at some future time endeavor to make up the loss that had occurred prior to January 31, 1900. Unfortunately, before any opportunity of that kind occurred the firm of Ellingwood & Cunningham went into bankruptcy.

I think that Mr. Rogers recognized a moral obligation upon his part in connection with this account. He knew that I was a comparatively poor man. He knew that I had other interests at that time from which I suffered, and suffered materially, and he endeavored to the best of his ability to assist me from time to time in loans, to help make my account look better upon the books. And, as a matter of fact, as referring to the evidence that you sought to obtain from Mr. Carpenter this morning in relation to my draft account, where in 1901 along from June on to December there were numerous items which apparently could not be accounted for, those were items that were used by me in paying my individual expenses. I had what you might call in that draft account — it was an account of where I paid personal obligations, being a draft upon Ellingwood & Cunningham. I cannot

recall the items, what they are, at the present time. I can see some items here — for instance, an item of \$45.06, which I am quite positive about what that was for, because I have had an insurance premium that I have been paying for a good many years, that amounts to exactly that sum, \$45.06.

As to the statement that was made — reading the newspapers this morning — that I had received a specified sum from Mr. H. H. Vreeland, that I wish to emphatically deny. The amount that I received on any of the accounts that is entered upon this account never came to me from anyone except Mr. Rogers. Where Mr. Rogers got the money, received it, or for what purpose, I cannot tell. I know that he loaned me money from time to time, and I know that I repaid him money, but I did not receive a dollar from Mr. H. H. Vreeland or from Mr. H. A. Robinson.

As to the New York Transportation that is entered here, I have been trying to refresh my recollection in relation to these transactions, and my best impression is that the first 200 shares of New York Transportation was purchased by Mr. Rogers without consultation with me, and that the subsequent 100 shares, which was purchased on April 25, 1900, was purchased after I had become aware of the original purchase. I saw the statement in one of the papers this morning — I think it was a misquotation upon their part — that I had given the tip to Mr. Rogers to buy New York Transportation. I think Mr. Rogers testified quite the contrary yesterday. I did not give him the tip to buy New York Transportation. And when he made the original purchase he believed undoubtedly that there was a possibility of that stock rising, so that I would be benefited, so as to reduce the indebtedness to the firm. The two hundred shares of Transportation which is marked as having been received by me were 200 shares that I deposited with Ellingwood & Cunningham, which had been delivered to me from other parties, and was deposited in Ellingwood & Cunningham's on May 8, 1901, I having been informed by Mr. Cunningham that there was an opportunity to dispose of the New York Transportation to a party who desired to pick up what New York Transportation stock he could find, and I secured that 200 shares and put it in the hands of Ellingwood & Cunningham for him to dispose of, and as I recall this morning, that stock was that very

stock delivered to Mr. Goodsell, and it was not until October 21, 1901, that this Transportation stock was paid for, and my account was credited with the 500 shares, which was at the rate of 14. On that same day I drew out the \$2,800 representing the 200 shares which I had deposited there, which I had to pay to the parties from whom I received the original 200 shares of Transportation.

As to some of the items that are concerned in this account, to be specific about that after this lapse of time, is impossible. Generally speaking, I can say that there are undoubtedly items here that were funds received by me for campaign purposes, and not to be used entirely by myself, portions of which were delivered by me in some instances to the State Committee, and in some instances to the County Committee of Orange county, to be used for the general benefit of the campaign. What those amounts were I cannot specifically state, nor just how to identify each particular item here, I cannot, without something occurs to refresh my recollection.

As to my personal accounts, that is to say as to any personal record that I might have of these transactions, if I have any of those papers I have been unable to find them with what search I have made. There may be some papers at Goshen, and there may not, but I have not been able to go to Goshen on account of the illness of my mother. But my impression is that most of those papers were burned at the fire that occurred at the Hotel Gramatan, which occurred on June 8, two years ago. When I became, as I say, almost blind, and for two years was unable to perform any work, I took my law register, my ledger, my books of account, my private papers, home, in order to have access to them whenever I might need them, and when this fire occurred in 1908 I only succeeded in saving one suit of clothes, which I put on over my pajamas, and a couple of pairs of trousers hanging on the door. My wife succeeded in getting out only one dress in addition to the dress which she slipped on at the time, and everything was a total loss. To show that there was no opportunity of any of those papers having been saved, any of my private papers, I would say that my golf clubs that were in my rooms were themselves fused, so that there was no sign of any iron or steel or metal pertaining to golf clubs. Key rings, watches, everything of that kind utterly

destroyed. Now, whether I have any of those papers packed away in boxes in Goshen — I put a whole lot of things in storage — I am unable to say. But if you desire me to make any search for them I will go to Goshen and see if I have any papers on hand.

I think, generally speaking, I can point out to you this one thing, that so far as the personal account connected with Ellingwood & Cunningham may be concerned, that it was a loss to me, an actual loss upon the speculation, and with interest added, that amounted to approximately \$12,000, and at the time of Ellingwood & Cunningham's failure in 1905 the total amount then due to the firm of Ellingwood & Cunningham was \$7,065.86. I think that covers practically all that I can think of at this time.

Q. Your personal account opened with a debit balance to you of \$7,775.98, which was made up of your share of the loss on the Rogers, Bedell & Green account, together with your share of the loss on the Manhattan Pool account, was it not? A. That appears to be the fact from the ledger, as you showed it to me a few moments ago.

Q. Now when the firm failed on February 15, 1905, you still owed them \$7,065.86, did you not? A. Yes, sir, according to this statement.

Q. And during the time that this individual account had been in operation there were no operations on the Rogers, Bedell & Green account or the Manhattan Pool account excepting a charge to you of a debit balance on April 28, 1902, of \$1,954.39? A. I think that is correct, according to the book.

Q. During the time this account, this individual account, was in operation there had been credited to your account a total sum of \$24,281, made up as follows: On April 17, 1900, from Vreeland — A. Excuse me, I never received anything from Mr. Vreeland.

Q. I am speaking now as far as the books show. A. The books do not show that I received it from Mr. Vreeland. I would like to have you point it out to me.

Q. The books show, do they not, that the money came to Ellingwood & Cunningham from Mr. Vreeland, and was by them credited to your account? A. I don't think so. I think that they came to Mr. Rogers, possibly. I can't tell you. I had no transaction with Mr. Vreeland or Mr. Robinson.

Q. I show you one of the check books of Ellingwood & Cunningham, which has been identified by Mr. Carpenter, the bookkeeper, and which has contained in the book as he testified, the deposit sheets, and under the date of April 17 I find this record: H. H. Vreeland, 3,000 credited L. Bedell 2375, L. Goodsell 300, G. T. Rogers 325. A. That might be true, but, however, it was not anything that was sent to me, or that I knew that Mr. Vreeland was paying anything into that firm for my benefit.

Q. I think you misapprehended my question. My question was that on the books of Ellingwood & Cunningham on April 17, 1900, you were credited from Vreeland \$2,375. It does not refer to your knowledge, it refers to the fact as it appears upon the books. A. That may be true. I don't know what entry was made upon the books.

Q. May 18, same year, you are credited with \$125 from G. T. Rogers. On May 1st, 1901, you are credited with \$3,500 from Mr. Robinson. You knew Mr. Robinson, did you not? A. Yes. I never received anything from Mr. Robinson.

Q. I am speaking not as to your knowledge, Mr. Bedell, but as to the fact as it appears upon the books of Ellingwood & Cunningham. A. Does it appear to whom those checks were made payable?

Q. Yes. A. To whom were they made payable?

Q. Just a moment. I show you one of the blotters of Ellingwood & Cunningham, concerning which Mr. Carpenter testified, and under the date of May 1st, 1901, there appears: "Margin \$3,500, \$3,500;" "H. A. Robinson" scratched out. "L. Bedell special," and that appears under the same date as a credit to your account. If you will look at it as you hold it in your hand? A. Where is "H. A. Robinson" scratched out?

Q. On the deposit book of the same date, May 1st, 1901, there appears "H. A. Robinson, \$3,500." The same date, the same amount. A. That does not necessarily follow that that was the same transaction. I want to say, and I want to deny that Mr. Robinson gave me a check for \$3,500.

Q. That is not my question, Mr. Bedell — A. Well,

Q. My question is that the books of Ellingwood & Cunningham show that they received on May 1st, 1901, \$3,500 from Mr.

Robinson, which was credited to your account? A. I say that the books don't show that. They show simply a similarity of amounts.

Q. They show a similarity of amounts? A. Yes.

Q. And a similarity of dates? A. Yes.

Q. Robinson's name has a line put through, and up above "L. Bedell special," and your account shows that amount charged on that date? A. That may be true. However, I deny I received anything from H. H. Robinson. I asked you if you knew to whose order those checks were drawn. You stated you did. I would like to know myself.

Q. From the fact that it appears in the books of Ellingwood & Cunningham that the check was deposited by them and collected by them, the inference is irresistible that the check was drawn to them? A. To them.

Q. To them, and credited to your account. I am only speaking now of what the books show. A. I want to specifically deny that I received any checks to my order, and I do so deny it.

Q. I am evidently unable to make myself clear; perhaps I am obtuse. Let me try again. What I am endeavoring to show is, not what you received or what you knew; I am endeavoring to show the books of Ellingwood & Cunningham show on their face that on May, 1st, 1901, they received from Mr. Robinson \$3,500, which was upon that date credited to your account, and there is no question about it. The evidence given by Mr. Carpenter shows it. The books themselves show it. Now, again, on May 3rd, 1901, the books of Ellingwood & Cunningham show that \$2,500 was received from Rogers and credited to your account; and on the same day they show that they received \$5,000 from Rogers, which was credited to your account; and on October 27th, 1902, it shows that they received from a man by the name of Schneider \$600, which was credited to your account; on November 6th, 1902, the books show that they received \$3,000 from Robinson, which was credited to your account; on January 23rd, 1903, \$1,000 from Rogers, which was credited to your account; on February 6th, 1903, \$750, which was credited to your account; on May 31st, 1903, \$431, which was credited to your account; making in all on those dates \$19,281. The books also show that on October 22nd, 1902, you were credited with \$5,000. The books which

would indicate where that money came from, unfortunately cannot be found. Can you tell me from whom you received the \$5,000 on October 22nd, 1902? A. I cannot, to be positive.

Q. What is your best recollection? My best recollection is that it was probably placed there and credited by Mr. Rogers.

Q. So that during the time this individual account was in operation, you received or were credited with moneys, none of which came directly from you, in the amount of \$24,281. During that time, you overdrew, as appears by your account which you hold in your hand, \$21,750 in cash; and when the firm failed, you practically owed them on the face of it, the same amount which you owed them when the account started, and during the entire time — A. I beg to differ with you. I did not owe them the same amount. There had been nearly \$5,000 paid on that account.

Q. The account opens with a debit balance of \$7,775.98, plus \$1,954.39, and closes — A. But there is \$2,300 of interest.

Q. And closes with a debit balance of \$7,065.86. A. Making the total amount — I paid approximately on that \$5,000.

Q. But notwithstanding, I go back to my original statement that your account opened with a debit balance of \$7,775.98, and closes with a debit balance of \$7,065.86, that is correct, isn't it? A. That is correct, I assume.

Q. Now, have you paid that balance? A. I have not.

Q. It is still due, is it? A. Still due.

Q. Now, who delivered to you the two hundred shares of Transportation with which you are credited on May 8th, 1901? A. I think it was delivered to me by J. M. Fiske & Company.

Q. From whom did they receive it? A. They bought it for my account.

Q. Upon whose order? A. Upon my order.

Q. Did you pay them for it? A. I did.

Q. How much? A. I could not answer.

Q. Who are J. M. Fiske & Co.? A. Brokers in New York City.

Q. Did you have a regular account with them? A. I did.

Q. And through what time did it extend? A. I think for — certainly from 1897, in the winter of 1897 or 1898, I am not sure which — up to three or four years ago.

Q. Was it an individual or joint account? A. Individual.

Q. Did you have with them any joint account? A. I did not.

Q. Did you have any account with any other brokerage firm?

A. Not at that time, no, sir.

Q. Have you had an account with any other brokerage firm except Fiske & Company and Ellingwood & Cunningham? A. I have.

Q. With what firm? A. I had an account with the firm of Maclay & Company.

Q. A New York concern? A. Yes.

Q. Still in existence? A. Still in existence.

Q. Where are they? A. Oh, no, they are not in existence; I beg your pardon, they are not in existence; they failed.

Q. Was Mr. E. R. Thomas a member of that firm? A. I don't know; E. R. Thomas, no, I think not.

Q. Was there a Mr. Thomas connected with the firm? A. As I understand it, there was a Mr. Thomas, who was the young man, the son of O. F. Thomas; they had a branch office in the Murray Hill Hotel.

Q. The gentleman by the name of Thomas who was a member of the firm was the son of O. F. Thomas, was he not? A. I am not positive about that, but I assume so. He went out of the firm, and then it became Robert Maclay & Company.

Q. Did you have either a joint or individual account, Mr. Bedell, with any other firm? A. No, not to my knowledge, not to my recollection.

Q. Why did you withdraw the two hundred shares from Fiske & Company, deliver them to Ellingwood & Cunningham? A. For the reason I was told by Mr. Cunningham that that stock could be disposed of through Mr. Goodsell.

Q. What did he say about that? A. I could not be specific.

Q. Give it in substance. A. I think he advised me that Mr. Goodsell had given an option to someone, I don't know who, I never talked with Mr. Goodsell upon the subject, not at that time, for what stock he could gather in, and Mr. Cunningham advised me of the fact. I told him that I had 200 shares of New York Transportation, that was with J. M. Fiske & Company, and I secured it from J. M. Fiske & Company, and when

I was paid for that stock on October 21st, 1901, I drew out from Ellingwood & Cunningham the \$2,800 which represented those 200 shares of stock at fourteen.

Q. That was on May 8th, 1901, was it not? A. Yes, I assume so; I assume that this is a correct statement of dates.

Q. Do you know, as a matter of fact, whether your stock was delivered to Goodsell, those 200 shares? A. I do not know as a matter of fact.

Q. Did you own, at that time, other stock in the New York Transportation Company? A. I did not.

Q. Simply the 200 shares? A. I owned those 300 shares that were in the account of Ellingwood & Cunningham.

Q. Then you owned in all at that time 500 shares? A. Yes, sir.

Did you give him any orders as to what he was to dispose of it for, at what price? A. My recollection is that it was to be disposed of at 14.

Q. What did it cost you? A. The account here speaks for itself as to the 300 shares of Ellingwood & Cunningham. As to the 200 shares, I could not tell without reference to the books of J. M. Fiske & Company.

Q. What is your best recollection? A. I have no recollection that is positive.

Q. Was it more or less than 14? A. I should say it was approximately the same price I paid for the other.

Q. To whom had Mr. Goodsell given this option? A. I don't know.

Q. Do you know anything further about it than you have stated? A. I do not.

Q. Did Mr. Cunningham state to you why it was that Mr. Goodsell was able to deliver this option and then dispose of your stock at a better price than you could get in the open market? A. He may have made some statement to me.

Q. What is your recollection of it? A. I have no recollection that is positive at all.

Q. Was it not quite extraordinary to you that Mr. Goodsell could collect in 1,500 shares of Transportation and dispose of it at a higher price than could be gotten in the open market? A.

Well, I don't know what thought I might have had on the subject; I cannot tell now.

Q. You were well acquainted with Ex-Senator Goodsell? A. Very.

Q. And you were well acquainted with Mr. Cunningham? A. Yes, sir:

Q. And they were not keeping anything from you regarding a transaction in which you were interested? A. I did not see Mr. Goodsell in relation to it at all.

Q. Mr. Cunningham and you were on intimate business and personal terms, were you not? A. Yes.

Q. Will you just reflect for a moment, if you will, Mr. Bedell, and see if you can tell me anything further in regard to that conversation between you and Mr. Cunningham, as to why Senator Goodsell was able to collect in these 1,500 shares and dispose of them at a price in advance of what the stock was selling for in the open market? A. Very frankly, I have no recollection on the subject. He may have told me; but it was nearly ten years ago.

Q. Do you recall, Mr. Bedell, whether or not you bought these 200 through Fiske & Company, before you had purchased the 300? A. I do not recall it, but I assume I purchased it afterwards.

Q. Afterwards? A. Yes; and I was told it was a pretty good thing to buy.

Q. Who gave you the tip; I believe that is the proper word. A. I could not answer that now.

Q. What is your best recollection as to who gave you this valuable information? A. I have no recollection at the present time; I think it was generally talked of; I probably got it from what you might call general knowledge.

Q. Do you recall whether or not you made or lost on the whole transaction in Transportation? A. I think I got out about even, I should say. I do not think there was any particular gain or any particular loss. That is an assumption—I have never figured it out. That is, I may have figured it up then, I may have.

Q. Do you recall anyone else who contributed to this pool of stock that Senator Goodsell was gathering in? A. You mean from knowledge?

Q. Yes, from knowledge? A. I have no knowledge.

Q. Or in any other way? A. I have been told that there were several that contributed to it; who it was, I don't know.

Q. Do you know who they were? A. Not of my own knowledge, no, sir.

Q. Do you know that S. F. Nixon contributed 500 shares? A. Only by having been told so.

Q. Were you told so at the time? A. No, sir.

Q. How long afterwards? A. I have learned it now for the first time.

Q. Did you know it before that? A. No, sir.

Q. Did you know J. T. Rogers contributed 100 shares? A. I knew he contributed something, I don't know the amount.

Q. Did you know it at the time? A. I think I did.

Q. How did you know it? A. I think he told me so.

Q. Did you know J. P. Allds contributed a hundred shares? A. I did not; I never knew he owned any of the stock.

Q. Did you know A. E. Baxter contributed 200? A. I did not.

Q. Making in all, 1,400 shares? A. I did not know about Mr. Baxter, or Mr. Allds.

Q. I show you Exhibit 14, which is the receipt given by Senator Goodsell for the 1,500 Transportation; this receipt is dated May 7th, 1901; you were credited with this stock on May 8th, 1901. Do you think you could have been mistaken as to this being the 200 shares? A. I do not think I am mistaken, no.

Q. Well, of course, it could not have been delivered until you had it? A. No.

Q. And if the receipt is correct as to the date and the entry in the book is correct as to date, then it could not have been the same 200? A. All I know is that the 200 I deposited there was to be delivered — or they may have had other stock in their possession: I don't know; I don't know what the transaction was so far as Ellingwood & Cunningham was concerned.

Q. You cannot tell me who gave you the tip in April, 1900, to buy the first 200 shares of Transportation, 100 of which was bought at 11 7/8, and the other hundred at 11 5/8? A. No, I could not tell you.

Q. Did you then know, or do you now know, that the New York Electric Vehicle Transportation Company was incorporated in New Jersey, February 21st, 1899, with a capital stock, all common, of 25 million dollars, par value \$100 a share; and that of this amount, 235 shares only have ever been issued? That on January 4th, 1902, the name of this company was changed to the New York Transportation Company, and the stock was reduced to five million dollars, it never having been more than \$20, paid, or one-fifth of the 25 million dollars, the original stock having become \$20, paid on June 6th, 1901, by an assessment of \$10 a share? Did you know that at that time, or do you know it now? A. I have no recollection of knowing anything particularly about the stock.

Q. Did you then know, or do you now know that the above company has for some time owned the entire capital stock of the following companies: Metropolitan Express, the Park Carriage Company, the Fifth Avenue Coach Company, the Motor Cab Company, the Taximeter Carriage Company? A. I understood that the New York Transportation Company was the owner of, what is it called, the Metropolitan Express?

Q. Yes. A. And also of a stage line.

Q. The Fifth Avenue Stage Line? A. The Fifth Avenue Stage Line; and also that they were operating electric cabs. I had a general knowledge of the subject, not what you would call definite knowledge.

Q. Are you aware that in the original instance about one-third of the entire capital stock of the Electric Vehicle Company, to be exact, 70,000 shares, had been continuously held by the Electric Vehicle Company, and that the latter had been the largest stockholder by any considerable amount? A. I am not aware of it; I was not aware of it at the time; that is the first I have ever heard of it.

Q. Were you aware that the Electric Vehicle Company, which has owned the one-third and by far the largest interest of the New York Electric Vehicle Transportation, was incorporated in New Jersey, September 27th, 1897, with a capital stock, preferred and common equally divided, of ten million dollars, par value of shares \$100; that this capital was increased May 3rd, 1899, to twelve

million dollars, and June 20, 1900, to eighteen million dollars, on December 27th, 1900, to twenty million dollars, the latter figure being divided in the relation of eleven million dollars common and nine million dollars preferred; that a receiver was appointed December 10, 1907, for this company; that for some time the Electric Storage Battery Company, a New Jersey concern, has had a large stock interest in the Electric Vehicle Company; that recently it owned 32,098 shares of the common stock and 31,518 shares of the preferred stock, making a total of 63,616 shares out of the entire capital of 200,000 shares; that up to and including June 22nd, 1900, the Storage Company had really acquired more preferred stock than it holds at present, having acquired on May 16th, 1899, 19,400 shares preferred, and June 22nd, 1900, 24,000 shares preferred, making a total of 43,400 shares of preferred; that the Electric Storage Battery Company has apparently for some time owned a large part of the Electric Vehicle Company's stock, and that roughly speaking this has been about one-third; the Storage Battery has been in the past the largest stockholder of quite a little more than anyone else. Were you aware of those facts at the time they occurred, or are you aware of them now? A. I was never aware until this time, nor I would not now be unless you had read them. I suppose you have carefully looked it up.

Q. Were you ever aware at that time or are you aware now that the Electric Storage Battery Company was incorporated in New Jersey June 7th, 1888, with a capital stock of \$10,000,000, par value \$100; that this capital was subsequently increased December 6th, 1894, to \$12,000,000; December 18th, 1894, to \$13,500,000; May 10th, 1899, to \$18,000,000; there being two classes of stock, common and preferred, but the preferred being only \$189,900; that to review what I have already said, the New York Electric Vehicle Transportation Company, which owns all of the capital stock of certain cab, stage and coach companies in New York city, has been almost continuously owned, to the extent of one-third, by the Electric Vehicle Company, and that the Electric Vehicle Company has in turn been continuously owned to the extent of one-third by the Electric Storage Battery Company — were you aware of those facts, or are you aware of them now? A. No, sir, only as you have stated it.

Q. Now, when you received this tip on which you bought the 200 shares on April 9th, 1900, of Transportation, you were at that time chairman of the Committee on Railroads, were you not, in the Assembly? A. Yes, sir.

Q. Do you recall — referring to proceedings in the Senate, that on Friday, March 16th, 1900, Senator Goodsell introduced a bill entitled An act to amend the Transportation Corporation Law by the addition thereto of a section in relation to existing routes and extensions, which was read on that day the first time by unanimous consent, and also read the second time, and on motion of Senator Goodsell and by unanimous consent the rules being suspended, ordered to a third reading and sent to the Committee on Miscellaneous Corporations? A. I do not recall it.

Q. You were a member of the Assembly at that time and chairman of the Committee on Railroads? A. Yes, sir.

Q. Do you say you did not know of those facts at that time? A. I would not so state, I say I do not recall it.

Q. Now, you knew of the introduction of such a bill at that time, did you not? A. I don't think I did, I might have seen it and I might not.

Q. This bill was reported out on March 21st, 1900, with some amendments, which were agreed to, and the bill restored to its place on the order of third reading. It came up on Thursday the 29th, and was passed, and came over to the Assembly on Friday, March 30th. Do you remember the receipt of the bill in the Assembly? A. I do not.

Q. You were at that time a member of the Committee on Rules, were you not? A. I was.

Q. At the time this bill came over — I will state the Journal shows that the Committee on Rules had already taken charge of the calendar? A. Being the last ten days of the session.

Q. Yes. That the bill went to the Committee on Rules and was reported out immediately by the Committee on Rules, and passed, a motion was made to reconsider, which was lost, the bill was then returned to the Senate and went to the Governor as one of the thirty day bills. Now, you knew of the existence of that bill at that time, did you not? A. Unquestionably I did when it was placed upon the calendar, and it being one of the bills

introduced by the Senator from my district, following the usual procedure I moved the bill to the order of third reading, and moved its passage, as I did any bill of his that appeared on the calendar.

Q. Now, it was during the time that this bill was pending before the Governor that you received this tip and made the purchase of the 200 shares. Does that refresh your recollection any as to who gave you the tip? A. It does not.

Q. Or as to what were the circumstances under which it was received? A. I say I think I received it from what you might call general conversation. This was talked, that if the Governor signed that bill that stock ought to advance. I bought it just the same as I would buy any other stock.

Q. Do you think that fact had anything to do with its hasty march through Senate and Assembly? A. I don't think so.

Q. You know it was introduced on the 16th of March, and that it made as rapid progress as far as my familiarity with the rules of the Senate go — and you are certainly more familiar than I am with the rules of the Assembly — that a bill could possibly make? A. Well, the action of the Assembly was no more hasty than it would be on any other bill, because, as the distinguished chairman here knows as a member of the Committee on Rules, the Senate bills, if there is no objection to them, are usually put out as soon as they come over.

Q. And this bill shared that agreeable fate? A. The same as dozens of others, probably.

Q. The Legislature adjourned in that year on April 6th, 1900, did it not. I show you the Journal? A. If it so states in the Journal, it is undoubtedly correct.

Q. Will you examine the copy of the Journal which I hand you? (Witness does so.) A. The Journal states that the House was adjourned without date on Friday, April 6th, 1900.

Q. And this bill passed the day before the adjournment, that is the 5th? A. That I assume is correct if you so state it.

Q. And became one of the thirty day bills, and it was while this bill was pending before the Governor on April 9th, that you made this purchase? A. Unquestionably.

Q. Now, Mr. Bedell, you spoke of several of these cash with-

drawals by you from Ellingwood & Cunningham having been for campaign purposes. Now, won't you take up your account. I suppose if that were true they were withdrawals that were made during the campaign, would not that be the case? A. They might have been, and they might have been obligations that I had incurred, and which had to be subsequently paid.

Q. Now, will you examine your accounts which you have before you there, the original, and give me your best recollections as to what withdrawals you feel were made by you for campaign purposes as contributions? A. I don't think I could do that definitely.

Q. Can you give me any of them? A. Not to specifically identify any one of these. My recollection would certainly not sustain it. I mean by that that it is ten years ago, eight or nine years ago, and to identify one item from another, and specify just what it was for, I could not do it.

Q. Will you kindly look at your account under date of October 22nd, 1902. I notice a withdrawal there of \$4,450. Is it your recollection that that was made for campaign purposes? A. I would assume so.

Q. Do you have any recollection in regard to it? A. No positive recollection, it would be a presumption that I could readily accept, that it was for campaign purposes.

Q. Now that is rather a large amount, is it not? A. Yes, unquestionably.

Q. Can you search your recollection and tell me to whom you paid the money? A. I made payments to the State Committee and I made payments to the County Committee of my county.

Q. Do you think that you paid this \$4,450 to the State Committee? A. Not all of it, no.

Q. How much do you think you paid? A. Assuming that it was for that purpose, I assume that I probably paid \$2,000. I do not know. I don't want to testify to something that I do not specifically recollect, and I do not recollect the amounts or the items.

Q. Well now, was that a contribution from you or a contribution from the source from which the money came? A. Well, that was a contribution from the source, I suppose you would call it.

It was a contribution for the purpose — for the general benefit of the Republican party.

Q. Then you knew at the time the source from which it came?
A. I knew that it came through Mr. Rogers.

Q. From whom did it come through Mr. Rogers? A. I do not know.

Q. Didn't Rogers ever tell you? A. I don't think so.

Q. What is your best recollection? A. My best recollection would be he did not specify. I assume that it came from the street railroads.

Q. You would feel safe in that assumption, would you not? A. I would think so. I don't think it was a contribution by Mr. Rogers individually by any means.

Q. Now why do you think the street railway companies were transferring \$4,450 to the Republican Campaign Fund, either State or local, through Rogers, through Ellingwood & Cunningham, through you, into the treasury of the State Committee? Why did they adopt this circuitous route? A. I presume that you are cognizant of the state of affairs of the State Committee. Along about that time almost everybody was requested to obtain as much as they could for the purpose of taking care of the expenses of the State Committee.

Q. Now, these companies which were contributing to the State campaign fund in this way, was that done by them purely from a patriotic motive, or would you think they had some ulterior motive? A. Well, I would say that it was following the procedure that probably was very prevalent in the State of New York, of corporations generally contributing some certain sums of money, possibly to both organizations, in order that they might secure at the hands of the State organization fair treatment.

Q. What they would call fair treatment? A. Yes.

Q. That is that bills they felt were hostile to their interests would be held back or defeated, or bills which they felt possibly might be advantageous to their interest would be accelerated — is that right? A. I don't know as I would put it exactly that way.

Q. How would you put it? A. Well, I should put it upon the general proposition that they wanted to have the State organization feel friendly towards them — that is the way I should put it.

Q. How was this friendship of the State organization to manifest itself? A. How was it to manifest itself?

Q. Yes. A. That I cannot tell you.

Q. Would it be a good guess that when the Legislature met and any bill was introduced up there and referred to the Committee on Railroads that the railroads thought was inimical to the interests of the railroads, that perhaps that bill would not get out, or if it did get out that it would never get very far? A. No, sir; I don't agree with you. I think it was upon the proposition that bills that were radically wrong would not come out — I mean to say bills that were radically wrong. Whenever bills were introduced in the Legislature that were very proper to be passed as against a railroad corporation, they were passed.

Q. Then this friendship of the State organization was simply to manifest itself in suppressing bills that were thoroughly bad? A. I cannot answer that question.

Q. Well, in your judgment? A. I prefer not to have any judgment upon the matter.

Q. Based upon your experience? A. Well, if I were to base it upon my experience it would not be any better than yours.

Q. My judgment would be from what you have stated that the railroad companies, being anxious to have or to secure the good offices of the State organization, and putting up their good money before election, and if the Republicans controlled the Legislature and controlled the organization of the Assembly, and the organization of the Committee on Railroads, and the appointment of its chairman, that they would expect the Republican organization, in case any of these bad bills came up, to see that they were defeated. That, basing it upon what you have said, would be my judgment. Would that be yours? A. I think you have excellent judgment.

Q. Now let us take up the question of obligations which you incurred which the railroad interests felt they ought to discharge — do you recall any of those? A. No obligations that the railroad's interests discharged.

Q. Well, to what obligations did you refer. You said that these might be in payment of obligations which you had incurred? A. I mean to say that there were times when I had to give my note for certain expenses.

Q. What expenses? A. Campaign expenses.

Q. Of your own or of the State organization? A. Of my own.

Q. That is in securing your nomination or your election in your own district? A. Yes.

Q. And you think that some of this money was placed to your credit for the purpose of liquidating such obligations? A. Well I think that generally speaking, as I say, I received campaign contributions and I utilized those as I have stated in three different ways, first some payments to the State Committee, some payments to the County Committee, and some for my individual expenses.

Q. And where you gave your note for those obligations you think that after the election moneys were placed to your credit in the firm of Ellingwood & Cunningham for the purpose of liquidating those obligations? A. I don't think I would put it in that way. I might have used it to liquidate an obligation that had been created in the past.

Q. But they didn't know about it? A. I don't think they did.

Q. Do you think they suspected it? A. I don't think so. I may have told Mr. Rogers of the situation.

Q. They simply saw that it was credited there blindly not knowing for what purpose it was to be used? A. I do not say that it was put there for that purpose. I received that for Mr. Rogers. Now, what Mr. Rogers may have said to them I cannot answer. I said nothing to them.

Q. Now, you will note, Mr. Bedell, that you had a trading account and also a draft account? A. Since I have got these statements I think was the first time I was aware of that fact, that is that I have no recollection of it.

Q. I show you your draft account extending from May 3rd, 1901, to October 1st, 1902. Now, this draft account was an account against which you drew checks, was it not? A. I assume so, yes.

Q. No, if these moneys were paid in to Ellingwood & Cunningham as contributions to you, why were they placed in your trading account and not in your draft account? A. Well, that is a form of bookkeeping that I was not responsible for; I could not answer as to that.

Q. Would not that seem rather extraordinary? A. Looking at

these books, or the excerpts that I have from them, I think they represent an extraordinary set of books. I would like to make this joint, that you will find that all these transactions are entered upon the books of this company without any hesitation as to the names, &c., which, upon the face of it shows that there was no attempt upon their part at concealment.

Q. Referring to the draft account, I find there a withdrawal on May 21st, 1901, of \$2,000. Now, will you kindly reflect and tell me if you can what that withdrawal was, whether it was cash or by draft? A. I cannot answer.

Q. For what purpose was it made? A. I don't remember.

Q. I call your attention to the withdrawal on June 3rd of \$2,500 — do you recall how that was made? A. No, I do not.

Q. Or for what purpose? A. I do not.

Q. Or to whom it was paid? A. I do not.

Q. These are rather large amounts, are they not? A. They are.

Q. And two days later the withdrawal of \$1,500 — do you recall for what purpose that was made? A. I do not.

Q. Or to whom it was paid? A. No.

Q. Now, there is a withdrawal from May 21st to June 5th, rather a brief period, of \$6,000 — a considerable item. Can you tell me for what purpose any part of that was withdrawn? A. Well, I had — do you mean do I assume that I know, or do I know?

Q. Do you know? A. I do not know, I do not remember, and I haven't anything to refresh my recollection.

Q. Now, Mr. Bedell, where did you keep your bank account, say from 1899 to 1906? A. The National Bank of Orange County.

Q. Did you have any other bank account? A. Only as I utilized the firm of Ellingwood & Cunningham, or a broker's office where I may have had possibly to draw drafts on them in payment of bills.

Q. Do you think you had any other bank account excepting this one with the National Bank of Orange County, your account with Ellingwood & Cunningham, and your account with Fisk & Company, and the account with McClay & Company? A. The

account with McClay & Company was subsequent to that date. It was subsequent — that was after I had my eye trouble, and they opened up an office in the Murray Hill Hotel, and I was introduced to their manager there and I had some stock speculations with them.

Q. Then eliminating that company, did you have during the period from January 1st, 1899, to January 1st, 1906, a bank account with any other bank or concern excepting the National Bank of Orange County, Ellingwood & Cunningham, and Fisk & Company? A. From what date?

Q. From January 1st, 1899, to January 1st, 1906? A. I would not be positive about it, but when I was with the firm of Lexow, McKellar & Wells I had a bank account, a small bank account with a bank that was on Nassau street almost opposite the Hanover Bank Building. It is a bank that has gone out of existence now. One of the officers of the bank was Harry B. Fonda, of Poughkeepsie, a former friend of mine.

Q. How long did you have an account there? A. I cannot answer that.

Q. It was while you were with Lexow, McKellar & Wells. A. Yes, sir, I think so.

Q. What years were you with them? A. I think from 1897 to 1900.

Q. Then after 1900 I understand you to say you had no other bank accounts except those I have mentioned? A. I would not be positive of that — I don't know how long that continued. I know that my account with them was very small.

Q. Where is the National Bank of Orange County? A. Goshen, Orange county, New York.

Q. Referring now to your account, under date of November 7th, 1902 — election day being on November 4th of that year — you will note a withdrawal of \$2,800 in cash. Do you know for what purpose that withdrawal was made? A. No, I cannot state.

Q. Would it refresh your recollection if I told you that you drew that in four \$500 bills and eight \$100 bills? A. It does not.

Q. Those are bills of rather large denomination, are they not? A. Yes.

Q. Will you reflect for just a moment and think for what pur-

pose you wanted four \$500's and eight \$100's? A. That is assuming that I was giving directions for \$500 bills and \$100 bills. If it was paid to me in cash I took what they gave me.

Q. It is entered in their cash book here, or rather in their check book which is in evidence, four \$500's and eight \$100's. That seemed to me rather extraordinary, that they should enter upon the check stub the denomination of the bills in which the amount was paid, and it suggested to me that perhaps you had requested that the payment be made in bills of that denomination? A. I have no recollection of ever having made a request for any particular sized bills.

Q. It appears from this account and from the books of Ellingwood & Cunningham that most of your drafts, in fact, nearly all of them were in cash, some of them for very large amounts. Take, for instance, the one I just referred to, bills of very large denominations, one on October 27th previously of \$4,450. Can you tell me why you withdrew so much money in cash? A. Well, I don't know that those were withdrawals in cash. They may be entered on the books as cash and they might be cash or drafts. It might be a feature of bookkeeping.

Q. The books show that they were in cash, most of them. Did you have any occasion to use such large amounts of currency? A. If you are speaking of \$4,450 as you say, why, if that was given to me in cash, it was probably for the reason of turning it over in cash.

Q. Can you imagine to whom? A. Yes, I so stated, that I made contributions to the State Committee and to the County Committee.

Q. Why in cash instead of by check? A. I cannot answer that, why in cash instead of by check, if it was cash — I cannot state that it was.

Q. Now did you ever deposit in your bank account elsewhere any of these withdrawals made as appear on your individual account? A. I presume I did.

Q. They will appear then on the transcript of your account? A. I will assume so.

Q. Now, what is your best recollection, Mr. Bedell, as to whether or not you were able to preserve from the fire to which

you referred any of your bank books, check books or vouchers? A. Well, unless there are some that are in the box in storage at Goshen, I have none of them.

Q. And will you make a search and bring us what you find, if you find any? A. I will. I will as soon as my mother is in a condition for me to leave Poughkeepsie. She is quite ill, and as soon as she is out of danger.

Q. Would it be possible for you to go to Poughkeepsie by way of Goshen and let us know what you find there before we close this branch of this investigation? A. I don't know how soon you are going to close it.

Q. Well, assuming that it is closed within a week? A. Well, I should think I could determine it within a week. I have quite a number of boxes there that are stored. My old safe is stored. And incidentally, I might say, if there are any books in the safe, I have got to get somebody to open the inside, because I have lost the keys to the inside of the fire.

Q. Well, will you do that? A. I will.

Q. Will you turn again to your account, Mr. Bedell? A. This being correct, it is simpler to me, and I can understand it better, and unquestionably it is an accurate copy.

Q. Under the sheet entitled miscellaneous? A. Oh, it would be in here.

Q. I note that on May 1st, 1901, you are credited with \$35,000 cash special account, and on the same date — or May 3, rather, two days afterwards, you transferred to your draft account \$3,500, notwithstanding that at that time you owed Ellingwood & Cunningham on your trading account \$9,624.65. Can you tell me why you were permitted to do this? A. Why, as I explained to you in relation to this account, that I owed the firm of Ellingwood & Cunningham, and it was understood that that account, that indebtedness, should be wiped out if possible by some future speculation where a profit would ensue.

Q. I note also that on October 21, 1901, you withdrew \$2,800 cash and at that time you owed the firm \$7,309.43? A. That item I previously explained to you, Mr. Bruce, represented \$2,800, the two hundred shares of New York Transportation at 14.

Q. Notwithstanding that fact, you still owed the firm \$7,309.43,

why was the proceeds of your transportation not credited to your account, instead of allowing you to withdraw it in cash? A. For the reason that I had to make that payment for the Transportation in my other account, and for the additional reason that when I deposited the 200 transportation there it was understood that the proceeds of it would be returned to me.

Q. And not credited to your account? A. Not a permanent credit.

Q. With whom was that understanding had? A. With Mr. Cunningham.

Q. And why? A. For the reason that I had to pay for the 200 shares of Transportation.

Q. You had not, though, paid this company for it? A. Well, I don't know whether I paid them entirely for it or not. I might say that might have depleted my account to the extent that I would have to make it good.

Q. Then that was not the real reason or the only reason — that was not then the sole reason, that you could have the money, too, and with it pay for the 200 Transportation? A. Well, I could not answer that question, whether it was the sole reason or whether it was not. This occurred ten years ago.

Q. Did you know William Snyder, of Erie? A. If he was a member of my committee I unquestionably did.

Q. Was not he a member of your committee in the year 1902? A. I heard you so state this morning, but I did not recall him until you referred to that, and if I were to see him now I don't know as I would know him.

Q. I show you the Legislative Manual for that year. Will you kindly examine it and tell me whether or not he was a member of the Legislature, the Assembly of that year, and a member of your committee? A. Why, if it appears in this book, that is unquestionably correct.

Q. If you will please look at it? A. I see in this book, under the membership of committees, under railroads, Mr. Snyder, of Erie.

Q. Now look under the list of the members of the Assembly for that year and see if you find Snyder, of Erie? A. Yes.

Q. Then he was a member of the Assembly representing an

Erie county district that year, and a member of the Committee on Railroads, am I correct? A. Undoubtedly.

Q. Now on October 27, 1902, \$600 was put into your account and through that transferred to Mr. Snyder. Can you give me any explanation of that transaction? A. I have no recollection of that transaction, no.

Q. Did you have any business dealings with Mr. Snyder? A. No, I did not have any business dealings with Mr. Snyder, but I can tell you what I assume it was, if you want to know.

Q. Is it an assumption based upon knowledge? A. It is not. It is an assumption only, because I have no definite recollection. I am going simply on assumption.

Q. What is your best recollection, independent of any guess or assumption? A. I have no recollection that is definite. It would be an assumption.

Q. Well, what is the assumption? A. The assumption is that that amount was paid through Mr. Rogers. I don't know why he put it in my account — to Mr. Snyder for campaign purposes. That is my assumption. And my further assumption is that Mr. Rogers received it from Mr. Carl Levy of Buffalo, where Mr. Snyder is located.

Q. Who was Mr. Carl Levy? A. He was the president — or whatever the name of the Buffalo Railroad Company is.

Q. International Railroad? A. I don't know what the name is.

Q. Why do you assume that the money came from the railroad company of which Mr. Levy was president down to Ellingwood & Cunningham through your account into Mr. Snyder's hands? A. It is only an assumption. If you ask me why I assume I can tell you. That is the one conclusion with which I can associate the transaction with \$600.

Q. Have you discussed the transaction recently with Mr. Rogers or Mr. Cunningham? A. I have not discussed it with Mr. Cunningham. I have not with Mr. Rogers, except to ask him who Mr. Snyder was. He did not know. And I did not have my recollection refreshed until you read from the book that he was a member of the Railroad Committee during that year.

Q. Now, Mr. Bedell, it appears that when you withdrew this \$4,450 cash on October 27, that you still owed them \$343.32,

notwithstanding that you were allowed to make the withdrawal of \$4,450 in cash. Can you explain that other than the explanation you have given that it was a political contribution? A. The general explanation as I have heretofore made, that the indebtedness that I owed to the firm created by the speculative account was to be taken care of by some future speculation, which we hoped would wipe it out.

Q. Did Senator Goodsell give you any Transportation stock?
A. He did not.

Q. Do you now own any Transportation stock? A. I do not.

Q. Did you ever own any Transportation stock other than the 500 shares? A. I never did.

Q. Do you know the person to whom or institution or concern to which Senator Goodsell transferred the 1,500 shares of Transportation? A. I do not.

Q. Did you ever hear? A. I have not.

Q. Did you ever inquire? A. I did not.

Q. Now do you remember at the time your 500 Transportation was sold, say October 21, 1900, of receiving the following letter from Ellingwood & Cunningham, "October 21, 1901. Hon. Louis Bedell, Goshen, New York. Dear Sir: We beg to advise you that we have passed to the credit of your account this day \$7,000, being amount received from Hon. Louis F. Goodsell. You will understand the credit. Yours very truly. Ellingwood & Cunningham." What was understood by "You will understand the credit?" A. Why, I understood the 500 shares of stock of New York Transportation that stood in my name had been delivered by Ellingwood & Cunningham to Mr. Goodsell, and that he was to account for it by the payment at the rate of 14.

Q. Why did Mr. Cunningham use the rather obscure phrase, "You will understand the credit," instead of stating the fact?
A. You will have to ask him. I don't know why he used it.

Q. You know of no reason why he should have used it? A. No.

Q. Going back now to the spring of 1900, when this New York Transportation was pending before the Governor, do you recall having had any communication with Messrs. Ellingwood & Cunningham in regard to it? A. I don't recall it.

Q. What is your best recollection, did you or did you not? A.

My best recollection is that I had no communication. That is my best recollection.

Q. I show you a telegram found among the records of Ellingwood & Cunningham, dated Goshen, New York, April 20, 1900, five days before the bill was signed, to Ellingwood & Cunningham, 43 Wall street, New York, "I think it quite doubtful if the bill will be signed." Did you send such a telegram? A. Undoubtedly.

Q. Did that refer to that bill? A. I presume it did, if it was at this time. What date is this?

Q. That is April 20, 1900. The Legislature adjourned on the 6th. The bill was signed on the 25th. A. Who was Governor at that time?

Q. Theodore Roosevelt. You did send that? A. If there is a copy of a telegram of that kind in the records of Ellingwood & Cunningham I undoubtedly sent it. I have no recollection of it.

Q. Why were you communicating with Ellingwood & Cunningham in regard to this New York Transportation bill which was pending before the Governor? A. For the reason that I had some New York Transportation stock, and I knew that some others did.

Q. Do you recall having been in a dinner pool account? A. Unfortunately, I do.

Q. What was the dinner pool account? A. Well, generally speaking, as I recall it, there were a number in the office of Ellingwood & Cunningham, and it was suggested that we buy a certain amount of Manhattan stock, in order to pay for our luncheon down at Delmonico's, which we were going to get — just going out to luncheon. And I have forgotten how many there were in it. But we agreed to sell it that way. When we came back from the luncheon the stock had quite a pronounced call. Then it was thought to hold it over to the next day. Still they kept on holding it until my share of that account was \$2,500. So I had one luncheon at Delmonico's that was \$2,500.

Q. That does not appear in any of your accounts that have been introduced in evidence. A. It appears where I am charged with \$2,500, Manhattan Pool account.

Q. Then the Manhattan Pool account and dinner account was the same day? A. Yes, sir.

Q. Fortunately you had the luncheon first? A. Yes, sir. It

would be like a pear that I had at Paris this year. They charged me two francs for it, and I immediately had indigestion. By the way, I would like to have it appear on this record that at the time of the examination of Mr. Hotchkiss I was abroad on business matters. I would like to have that appear on the record.

Q. That is already on the record, and was entered without objection. I believe you stated to me that you were acquainted with Mr. Vreeland? A. Yes, sir.

Q. Now do you recall having received the following letter from Mr. Cunningham on or about May 7, 1900: "Hon. Louis Bedell, Goshen, New York. My Dear Louis: F. N. was told by H. V. this morning that he considered N. Y. Transportation all right, and advised him to hold it. I tell you this for your comfort, also that you may advise Mr. Taggart as to what is the best thing to do. Yours truly." (Signed) "J. W. Cunningham." A. What are those initials?

Q. "F. N. was told by H. V. this morning that he considered N. Y. Transportation all right," etc. A. F. N.?

Q. Who was the Speaker of the Assembly that year? A. Oh, Well, F. N. would of course stand for Fred Nixon, but it would not stand for his full name.

Q. Do you recall having received that letter? A. I don't recall it, no, but I undoubtedly did.

Q. And do you think that F. N. did refer to Mr. Nixon? A. I don't think of any one else — that is, it does not occur to me of anyone else whose initials would be F. N.

Q. Do you think H. V. stood for Mr. Herbert Vreeland? A. Well, I would assume so.

Q. Don't you think that perhaps you did know at this time who the other parties were that were interested in New York Transportation? A. I may have known, as I stated to you, I may have known that other parties were, because there were a number of parties doing business with the firm of Ellingwood & Cunningham that bought New York Transportation.

Q. Who was Mr. Taggart? A. Mr. Taggart is a resident of Orange County, practically living at Goshen at that time. He was the County Clerk at that time.

Q. Was he interested in New York Transportation? A. I think so. I think he had some stock.

Q. Did you hold any for him? A. I did not.

Q. Do you think that at this time you perhaps knew that H. V. had paid for your 200 Transportation? A. No, I never knew that Mr. H. V. ever paid for my New York Transportation, nor did he.

Q. Well, the books of Ellingwood & Cunningham show that he did. A. I beg your pardon, the books of Ellingwood & Cunningham don't show any such thing. The books of Ellingwood & Cunningham show that I had deposited to my credit by Mr. Rogers. No, I don't want a misstatement of that kind to go out. It is not true.

Q. See if I cannot refresh your recollection? A. You can't refresh my recollection at all.

Q. Possibly I might be able to refresh your recollection as to what the books show. That's what I am discussing — not as to what you knew. A. Well, we went over that once before Mr. Bruce.

Q. I want to show you again a deposit, the deposit sheets in the book, check book under date of April 17, 1900, which reads: "H. H. Vreeland, \$3,000, credit L. Bedell, \$23.75," which is the exact amount for which that Transportation calls? A. \$3,000, credit L. Bedell, \$23.75, L. Goodsell, 300 G. T. Rogers 325. If that had been a transaction between Mr. Vreeland and myself —

Q. I did not state that? A. That is the impression that goes forth in the form of your examination.

Q. I stated, Mr. Bedell, that the book of Ellingwood & Cunningham showed that the money with which you were credited on April 17, 1900, in payment for the 200 shares of New York Transportation, 100 at $11\frac{1}{8}$ and 100 at $11\frac{5}{8}$, making a total of \$2,375, came from H. H. Vreeland. You stated to me that the books did not show any such thing. I think I have refreshed your recollection that the books do show it, have I not? A. The books show as you have read, but I want to emphatically state that I did not know that at this time.

Q. We won't have any discussion about that at this time, because I did not state that you knew. A. All right. I don't want it understood that I knew.

Q. No, but you were very strenuous with me, if my recollection serves me right, that the books did not show it. A. Yes.

Judge BRUCE: That is all for to-day, Mr. Bedell, but if you will kindly be in attendance to-morrow morning, and if there is any other question I wish to ask you, after looking over the minutes, or any other statement you wish to make after looking over the minutes, the opportunity will be afforded.

Mr. BEDELL: I would like to state that unless you think you want to call me again to-morrow morning, that I would like to be relieved if possible.

Judge BRUCE: I could tell you at the opening of the session to-morrow morning.

Mr. BEDELL: Or, if I could telephone to your office prior to that time.

Judge BRUCE: Were you going to leave town?

Mr. BEDELL: I want to go home — that is, I wanted to go up to my mother's.

Judge BRUCE: What time does the train leave that you thought of taking?

Mr. BEDELL: I would probably go up to-night.

Judge BRUCE: I will probably let you know by ten o'clock, if you will call up the office.

Mr. BEDELL: All right.

Chairman MERRITT: The Committee will stand adjourned until to-morrow morning at 11 o'clock.

Adjourned to Friday, September 9, 1910, at 11 A. M.

THIRD PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, September 9, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ALFRED HURRELL, Esq.,
ISIDOR J. KRESEL, Esq., } *Assistant Counsel*.

Judge BRUCE: Mr. Chairman, I shall call no other witnesses to-day except Mr. Carpenter and Mr. Goodsell, and all other witnesses if you see fit may be excused until next Wednesday at 11 o'clock, to attend without further notice or subpoena.

Chairman MERRITT: Pursuant to the statement of counsel I would say that all witnesses except Mr. Carpenter and Mr. Goodsell may be excused for the day, and that they will all appear here on the 14th at 11 o'clock without further notice.

Judge BRUCE: In the summary statement, Mr. Chairman, which I made yesterday, after the examination of Mr. Carpenter, as to what the books of Ellingwood & Cunningham showed with reference to Mr. Louis Bedell's account, it appeared that his indebtedness was nine thousand some odd dollars when the firm failed, which was an error; it should be \$7,309.43. For the sake

of complete accuracy I wish to make that correction. It later appeared in the evidence, at page 182, that it was \$7,309.43. but the previous summary that I had read at the close of Mr. Carpenter's examination the "7" was made a "9."

GEORGE CARPENTER, recalled.

Examination by Judge BRUCE:

Q. I show you, Mr. Carpenter, three pages from the loose leaf ledger of Ellingwood & Cunningham and ask you if you find there the account of Mr. L. Goodsell? A. Yes, sir.

Q. Were you acquainted with Mr. Goodsell? A. No, sir.

Q. Had you ever seen him? A. Possibly I have seen him, but I would not recognize him.

Judge BRUCE: Will Mr. Goodsell stand up to see whether the witness recognizes him.

(Mr. Goodsell stood up.)

The WITNESS: His face seems familiar, but I would not have known him before.

Q. This account, referring again to the leaves from the loose leaf ledger, opens on April 6th, 1900, does it not, and starts with the purchase of 100 Transportation at 11, amounting to \$1,112.50? A. Yes.

Q. At that time Mr. Goodsell had no margin deposited at all, did he? A. Well, not in this account — I don't know whether he had any other accounts.

Q. I am referring only to the account which is before you? A. That is right.

Q. Do you know of any other account which he had? A. I don't know of any, I don't know whether he had any.

Q. An examination of the ledgers, for your information I will tell you, shows that he had no other account — this is his complete account. Now, on April 17th, 1900, he is credited with a deposit of \$300 cash, is he not? A. Yes.

Q. Do you know from whence this came? A. No, sir.

Q. I will see if I can refresh your recollection, referring again to the check book of Ellingwood & Cunningham which I showed

you yesterday, and to the deposit sheets in the back of the check book, you find there, do you not, "H. H. Vreeland, \$3,000, credit L. Bedell \$2,375, L. Goodsell \$300, G. T. Rogers \$325," under date of April 17th, 1900? A. Yes, sir.

Q. You posted the ledger from the blotter and from the other books, did you not? A. Only from the blotter.

Q. From the blotter. Well, this \$300 cash which was credited to L. Goodsell upon that date was a portion of the proceeds of the check of H. H. Vreeland received on April 17th, 1900? A. Yes.

Q. Now, referring again to his account, you do not find any further transactions there between April 17th, 1900, and October 12th, 1900, do you? A. Nothing but interest charges.

Q. Now, on October 12th, 1900, Mr. Goodsell is credited with \$500 margin, is he not? A. Yes.

Q. Do you know where that came from? A. Not without referring to the books of original entry.

Q. Now, I show you a cash book, April 12th, 1900, to October 26th, 1900, and ask you if that was the cash book of Ellingwood & Cunningham, or one of them? A. Yes, sir.

Judge BRUCE: I ask to have that book marked for identification.

(Book marked Exhibit No. 23 for identification.)

Q. Now, referring to page 185 under date of October 11th, 1900, it shows that there was in petty cash, bills to the amount of \$592, and change to the amount of \$1.86 — isn't that correct? A. Yes, sir.

Q. Now, on the 12th it shows in the petty cash \$984, gold \$10, change \$10.86, making \$1,004.86, does it not? A. Yes, sir.

Q. In the meantime they paid out how much? A. \$1,446.

Q. I am asking you the amount paid in cash? A. I don't know, I think some of these items might have been daily checks, I can't tell.

Q. Those that are marked cash would have aggregated how much, \$75, would it not? A. Yes, sir.

Q. Which would make an increase in the petty cash from the 11th to the 12th of \$500. From that would you say that possibly

this \$500 margin was paid in in cash on that date? A. Might I look at that book and see if that is what the difference is (witness examines book). The exact amount is \$492.

By Mr. KRESEL:

Q. We will stand on the \$8 — it is about \$500, isn't it? A. Yes, sir.

By Judge BRUCE:

Q. Do you know where that \$500 came from, or approximately \$500? A. No, sir.

Q. Do you know whether or not it came from G. T. Rogers? A. I don't know.

Q. Now, referring again to the account, you find no further transactions from October 12th, 1900, until April 23rd, 1901 — isn't that correct? A. Nothing but interest charges.

Q. Nothing but interest charges — I do not refer to interest charges as transactions. Now, on that date, that is to say April 22nd, Mr. Goodsell was indebted to the firm on the sum of \$346.90, was he not, against which they held 100 Transportation which had cost \$1,112.50? A. \$348.68 is the amount.

By Mr. KRESEL:

Q. With that correction, is that your answer, \$348.68? A. Yes.

By Judge BRUCE:

Q. The difference between the amount you gave and the amount I gave, \$1.78 was interest, was it? A. Yes, sir.

Q. And against that indebtedness they held 100 Transportation which cost \$1,112.50? A. He held it, yes.

Q. Did he hold it or did they hold it? A. Whom do you mean by "they?"

Q. Ellingwood & Cunningham? A. Oh, yes.

Q. So that Ellingwood & Cunningham really had stock belonging to Goodsell worth more than his indebtedness, almost three times over, did they not? A. I don't know what it was worth on that day.

Q. Well, which had cost at least more than his indebtedness three times over? A. Yes, sir.

Q. Now, on April 23rd, 1901, Goodsell is credited with \$9,000 cash, is he not? A. Yes, sir.

Q. Do you know where that came from? A. No, sir.

Q. Do you know whether or not it came from H. A. Robinson? A. No, sir.

Q. I show you Exhibit No. 12 for identification, being one of the check books of Ellingwood & Cunningham from April 2nd, 1901, to May 3rd, 1901, and under the date of April 23rd, 1901 —

Mr. KRESEL: It is April 21st, Judge.

Q. April 21st, do you find this entry: "H. A. Robinson Special Account, Morton Trust Company, \$9,000" ? A. Yes.

Q. Isn't that the \$9,000 that went on that date to the credit of Mr. Goodsell? A. I cannot tell without checking it with the blotter.

Q. I show you the blotter — A. There might be another \$9,000.

Q. I show you a book entitled "Blotter March 5th, 1901, to April 29, 1901," and ask you if that is one of the blotters of Ellingwood & Cunningham? A. Yes, sir.

Judge BRUCE: I ask that that book be marked for identification.

(Book marked Exhibit No. 24 for identification.)

Q. I call your attention to the page entitled April 23rd, 1901, and to the entry there "On account Transportation \$9,000, \$9,000, L. Goodsell" ? A. There is another \$9,000 item there.

Mr. KRESEL: Yes, and it is Taylor, isn't it?

(Witness examines the books.)

A. Yes, that is right, Goodsell.

Q. Referring again to the account, on May 7th, 1901, you find, do you not, that Ellingwood & Cunningham owed Goodsell \$8,660.08, and that they had 100 Transportation — isn't that correct? A. Yes, sir, Ellingwood & Cunningham owed Goodsell.

Q. And they also had 100 Transportation belonging to Mr. Goodsell? A. Yes, sir.

Q. In other words he had a credit balance with Ellingwood & Cunningham of \$8,660.08, and they also held 100 Transportation belonging to him that had cost \$1,112 and some odd cents? A. Yes, sir.

Q. Now, on May 7th, 1901, Goodsell drew out \$1,000 cash, did he not, by draft? A. Yes. Do you mean cash as different from the check of the firm?

Q. It says "May 7th, Dft \$1,000," does it not? A. Yes, sir.

Q. What does that mean? A. It means that he drew a draft for \$1,000.

Q. Now, passing to the next item, we find that on the next day Mr. Goodsell purchased 100 shares of stock at fifty-two and an eighth, amounting to \$5,225, 100 Steel Preferred to 99 $\frac{3}{4}$ amounting to \$9,987.50, 100 Southern Pacific at 56 $\frac{3}{4}$, amounting to \$5,687.50, did he not? A. Yes.

Q. Now, going down to June 3rd of the same year, looking at his balance, Mr. Goodsell at that time owed the firm \$13,279.31 did he not? A. That's right.

Q. Against which they held 100 Transportation, 100 Steel 100 Steel Preferred and 100 Southern Pacific? A. Yes.

Q. Now, on June 3rd, 1901, Mr. Goodsell drew out, did he not, \$3,000? A. Yes.

Q. Did you know how that was drawn out? A. No,

Q. Well, unfortunately, it states cash, does it not? A. When you say, do I know how it was drawn out, do you mean the difference between cash and check?

Q. Yes. A. Well, it would not make any difference whether he got cash or a check.

Q. It would be put down cash, whether it was taken out by cash or draft? A. Yes, sir.

Q. Why is it you sometimes say cash and sometimes draft? A. Because it meant the same thing to us. I could tell by referring to the book, possibly.

Q. You could tell by referring to the book? A. The check book.

Q. Unfortunately, that check book is missing. Now, on June 5th, 1901, referring again to his account, Mr. Goodsell sold 100 Southern Pacific, did he not? A. Yes.

Q. For which he received \$5,985.50? A. Yes.

Q. Is that correct? A. Yes.

Q. Which was an advance of about \$300 over what he paid for it, having paid \$5,687.50, is that correct? A. Yes.

Q. Now, referring again to his account, you do not find any further transactions, do you, until October 21, 1901, no transactions from June 5th to October 21, excepting interest charges? A. Dividends, you don't call transactions.

Q. Excepting interest charges and dividends received upon stock, no transactions? A. No, sir.

Q. Now, on October 21st, Mr. Goodsell took out 100 Transportation, did he not? A. Yes.

Q. Which was delivered to him? A. Well, I don't think it was delivered to him.

Q. What does it say — D. D. L., October 21, 100 Transportation? A. I say, it was delivered. I don't know whether it was delivered to him or not.

Q. You don't know whether it was physically handed to Mr. Goodsell, or by somebody forwarded to him by mail, but it was delivered to him, whatever the delivery might have been? A. To his account.

Q. Now, there are no other transactions until December 10th, 1901, is that correct? A. That's right.

Q. And on that date — we will say the 9th, the day before, Mr. Goodsell owed the firm, did he not, \$10,160.03? A. Yes.

Q. But on that very date, December 10th, he draws out \$3,000 cash, does he not? A. Yes.

Q. Notwithstanding he was owing the firm \$10,160.03? A. Yes.

Q. Do you know whether that was taken out by a check or by cash, in currency? A. No, sir.

Q. You could tell if you had the check book, could you not? A. Yes, sir.

Q. Unfortunately, that check book is missing. Referring again to the account on December 11th — or 12th, rather 1901, Goodsell sold his 100 Steel, did he not, for \$4,085.50 — that is, the Common? A. Yes.

Q. Now, this cost him \$5,225, did it not? A. Yes, sir.

Q. So that was sold at a substantial loss? A. Yes.

Q. Of about how much? A. About \$1,200 — a little less than that.

Q. On the same day, he also sold his Steel Preferred, did he not? A. Yes.

Q. For \$9,060.50? A. That's correct.

Q. Now, this Preferred had cost him \$9,987.50, had it not? A. Yes, sir.

Q. Which was also a substantial loss of \$927, was it not? A. Yes.

Q. Now, after these transactions, Mr. Goodsell had no stock had he? Transportation had been delivered to him, and he had disposed of his Steel and his Southern Pacific, is that correct? A. Yes, he had no stock.

Q. And he had made no purchase, but after this sale, you find a balance due Mr. Goodsell of \$64.78, do you not? A. Yes, sir.

Q. That is, he drew out, did he not, on March 3rd, 1902, closing the account, or balancing it at least? A. Yes.

Q. Now, will you examine the account carefully, and tell me whether you find as between March 3rd, 1902, and July 7th, 1904, there were any stock transactions whatever? A. No, sir.

Q. What did the transactions between those dates consist of? A. See if I am not correct in stating it. On October 31st, between those dates, you say there were no stock transactions. Now, is it not the fact, referring to the account, that the only transaction between those dates is the deposit of moneys and the withdrawal of money? A. Yes.

Q. Extending over a period of how long a time? A. A little over a year.

Q. A year and four months, is it not? A. Yes, about that.

Q. Now, during that time, a year and four months, there was deposited to his account, how much in cash? A. \$12,000.

Q. And he withdrew how much? A. He withdrew the same amount.

Q. \$12,000, that is, he withdrew it all? A. Yes.

Q. Now, on March 3rd, 1902, as you formerly testified, the account had been balanced by the withdrawal of \$64.78, had it not? A. Yes.

Q. That is, the account stood even. He owed them nothing and they owed him nothing; is that correct? A. After March 3rd.

Q. They carried no stocks for him? A. No, sir.

Q. Now, on October 22nd, 1902,— I am taking up the items now that go to make up the \$12,000 which you stated was deposited during that year and four months—he is credited cash \$5,000, is he not? A. Yes, sir.

Q. On November 7th, 1902, he is credited from G. T. Rogers, \$2,000, is he not? A. Yes, sir.

Q. On January 30th, 1903, he is credited cash \$2,500, is he not? A. Yes, sir.

Q. And on March 9th, cash \$500? A. Yes.

Q. And upon October 21st, cash, H special, \$2,000? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Who was H, special? A. I don't know.

Q. Was it not Hackley Special? A. I don't know.

Q. You posted it? A. That is the way it was in the book that posted it from.

Q. That is the way it was in the book from which you took it? A. Yes, that is the way it was in the book.

Q. Now, there was an account known as A. S. Hackley, Special, was there not, with the firm of Ellingwood & Cunningham, at that time? I show you one of the leaves from the loose-leaf ledger upon which it appears? A. Yes, sir.

Q. And there was a withdrawal from that account on October 21st, of \$2,000, was there not? A. Yes.

Q. Now, again referring to the items that make up the \$12,000, which was deposited during the year and four months, and withdrawn, it appears, does it not, that on October 22nd, there was a cash deposit of \$5,000 which was withdrawn on October 21st; \$3,500, November 3rd; — \$1,500, am I not correct? A. Yes.

Q. On November 7th, there was \$2,000 deposited from Rogers which was withdrawn on the 17th, is that not correct? A. Yes, sir.

Q. On January 30th, 1903, there was \$2,500 deposited, which was withdrawn on February 10th, was it not? A. Yes, sir.

Q. On March 9th, there was \$500 deposited, which was withdrawn on the 17th, was it not? A. Yes.

Q. And on October 21st, there was \$2,000 deposited, which was withdrawn on November 4th, was it not? — no, November 4th a thousand, and January 5th, 1904, another thousand, making the two thousand, is that correct? A. Yes.

Q. Do you know where this \$5,000 with which he is credited on October 2nd, 1902, came from? A. No, sir.

Q. You could tell if you had the deposit book, could you not? A. I don't know. I would like to look at it first, to see.

Q. Well, the deposit book would indicate, would it not, where the money came from? A. It might.

Q. Ought it not to do so? The deposit book did indicate where moneys came from, did it not? A. It would probably show whose check it was.

Q. Well, after 1902, as you testified, there was a deposit book kept in which practically a complete record of every check was kept, was there not — almost a transcript of it? A. There was always a deposit book.

Q. Well, unfortunately that deposit book is missing. Now, this A. S. Hackley Special — did you know anyone of the name of A. S. Hackley? A. Yes, sir.

Q. Who was he? A. He was a clerk in the office of Ellingwood & Cunningham.

Q. A clerk in the office of Ellingwood & Cunningham? A. Yes.

Q. Now, referring again to the \$5,000 concerning which we have been talking, which was deposited October 22nd, 1902, I show you a book, and is not this one of the blotters of Ellingwood & Cunningham? A. Yes.

Judge BRUCE: This book is entitled "Blotter, September 5th, 1902, to January 6th, 1903," which I will have marked for identification.

(Said book is marked for Identification, Exhibit No. 25)

Q. Now, referring to the page on this blotter, under the date of October 22nd, 1902, when this \$5,000 was credited to Goodsell, it shows, does it not, \$5,000 Goodsell, and on the same date, \$5,000 Bedell, and on the same date \$4,063.78 G. T. R. Who was G. T. R.? A. Mr. Rogers.

Q. Now, adding those amounts together, does that in any way

refresh your recollection as to where the funds came from? A. No, sir.

Q. Now, passing to the \$2,000 on November 7th, it shows that came from G. T. Rogers, does it not? A. Yes, sir.

Q. Now, the \$2,500 on January 30th, 1903, do you know where that came from? A. No, sir.

Q. You could probably determine that if you had the deposit book, could you not, which is unfortunately missing? A. I could from the check probably, yes.

Q. Now, to be certain about that, and to refresh your recollection, Mr. Cunningham in his examination before Superintendent Hotchkiss, testified that prior to 1902, the records of the deposits were kept in the leaves at the back of the check books as you have seen them here, is that correct? A. Yes.

Q. And that after 1902, the firm kept a regular bound deposit book, in which there was transcribed practically a copy of all checks; is that correct? A. If I remember, they had a deposit book of that kind. I don't know as to the date.

Q. Now, if you had that deposit book, you could tell, and if the book was kept in the manner that Mr. Cunningham testified it was kept, you could tell where that \$2,500 came from, could you not? A. Well, if it was a check, yes, in these check books.

Q. Well, one of the embarrassing parts of this examination is, that that very valuable deposit book which would show the sources from which this money came, cannot be found. Now, referring again to the account, the withdrawal of the \$500 on March 9th, 1903, do you know where that came from — the deposit of the \$500 on March 9th, which was withdrawn on the 16th, do you know where that came from? A. No, sir.

Q. That would be entered in the same deposit book, would it not? A. Yes, probably. Well, if that was cash deposited, and was kept in the books, it would not be deposited —

Q. Well, if it were cash and went into the box, it would be entered in the cash book, would it not? A. Yes.

Q. Well, there is no such entry which we find in the cash book. From that, you would infer that it was a check, would you not? A. Yes.

Q. Now, referring to the account again, on July 7th, 1904, the account was balanced, was it not? A. Prior — the 6th.

Q. July 6th, 1904, the account was balanced? A. Yes.

Q. Goodsell owed them nothing, they owed him nothing, and carried no stocks for him, is that correct? A. That's right.

Q. Now, on July 7th, Goodsell buys 400 Union Pacific, at \$26,650 and 100 Union Pacific at \$9,162.50, making a total of \$45,812.50, does he not? A. Yes, sir.

Q. He had no margin up, had he? A. No, sir.

Q. So they purchased for him \$45,000 worth of stock without any margin, did they not? A. Yes.

Q. Now, on July 11th, 1904, he is credited with \$3,000 cash is he not? A. Yes, sir.

Q. Do you know where that came from? A. No, sir.

Q. It does not appear in the cash book. From that, you would infer that it was paid by check, would you not? A. Yes, I should think so.

Q. Unfortunately that is the same deposit book which is missing. Now, on July 18th, 1904, he sells the 500 Union Pacific, does he not, for \$48,562.50? A. Yes, sir.

Q. Making a profit of about \$3,000, did he not? A. A little bit less than that.

Q. And these stocks on which the profit had been made were bought without any margin, were they not, at the time the purchase was made? A. At the time of the purchase, yes.

Q. On July 18, 1904, referring again to the account, he withdraws the three thousand dollars, does he not? A. He withdraws \$3,000, yes.

Q. The account is wound up, or balanced rather on August 18, 1904, is it not, with a check to Goodsell of \$2,675.46, is that correct? A. Yes, sir.

Q. From which it appears that Mr. Goodsell's account ran from April, 1900, to August, 1904, does it not, nearly four and a half years? A. Yes, nearly, that is right.

Q. During which the only stocks bought were: April 6, 1900, 100 Transportation; May 7, 1901, 100 Steel; on the same date 100 Steel Preferred; on the same date 100 Southern Pacific; July 7, 1904, 500 Union Pacific. Isn't that correct; being only three stock transactions, that is, purchases on three different days of the four and a half years, 100 on one day, 300 on another day and 500 on another day, isn't that correct? A. Yes, sir.

Q. And during that time he received from Ellingwood & Cunningham or was credited by Ellingwood & Cunningham with the following credits, was he not: April 17, 1900, from Vreeland \$300? A. Yes, sir, by cash.

Q. I showed you from whence it came when I showed you the cash book, that it came from the \$3,000 check received from H. H. Vreeland. April 1, 1901, from Robinson, \$9,000? A. Yes, sir.

Q. I showed you that on the same day there was received from Robinson \$9,000, did I not, on the blotter? A. I don't remember that it gives on the blotter.

Q. On November 7, 1902, from Rogers \$2,000? A. Yes, sir.

Q. And on October 21, 1903, from Hackley \$2,000? A. Yes, sir.

Q. Making in all \$13,300? A. Yes, sir.

Q. And also he was credited from unknown sources as follows: October 12, 1900, \$500? A. Yes, sir.

Q. October 22, 1902, \$5,000? A. Yes, sir.

Q. January 30, 1903, \$2,500? A. Yes, sir.

Q. March 9, 1903, \$500? A. Yes, sir.

Q. July 11, 1904, \$5,000? A. \$3,000.

Q. \$5,000? A. \$3,000 it is here.

Q. You are correct; I am wrong; \$3,000? A. Yes, sir.

Q. Making a grand total of credits to his account of \$24,800 during that period, is that correct? A. That is correct, yes.

By Assemblyman YOUNG:

Q. That was during what period, the whole period of the account? A. Yes, sir.

By Mr. BRUCE:

Q. Is that correct? A. Yes, \$24,800.

Q. During that period he drew out in cash as follows, did he not: May 7, 1901, \$1,000? A. Yes.

Q. June 3, 1901, \$3,000? A. Yes.

Q. December 10, 1901, \$3,000? A. Yes.

Q. March 3, 1902, \$64.78? A. Yes, sir.

Q. October 31, 1902, \$3,500? A. Yes, sir.

- Q. November 3, 1902, \$1,500? A. Yes, sir.
 Q. November 17, 1902, \$2,000? A. Yes, sir.
 Q. February 10, 1903, \$2,500? A. Yes, sir.
 Q. March 16, 1903, \$500? A. Yes, sir.
 Q. November 4, 1903, \$10,000? A. Yes, sir.
 Q. January 5, 1904, \$1,000? A. Yes, sir.
 Q. January 18, 1904, \$3,000? A. Yes, sir.
 Q. August 18, 1904, \$2,675.46? A. Yes, sir.
 Q. Making a grand total of \$24,740.24? A. Yes, sir.
 Q. Making the difference between what he was credited with, of all he was credited with, and all he drew out, of \$59.76? A. Yes, sir.
 Q. And in addition to that he received 100 Transportation which were delivered to him? A. Yes.

Judge BRUCE: That is all. Senator Goodsell.

LOUIS F. GOODSSELL, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

- Q. Where do you reside? A. Highland Falls, New York.
 Q. What is your business? A. Real estate, contracting.
 Q. Where is your office? A. Highland Falls.
 Q. You have always resided at Highland Falls, have you? A. Something over 60 years.
 Q. Have you ever held public office? A. Yes, sir.
 Q. Please state what offices you have held? A. Supervisor 18 years; State Senator eight years; Assemblyman four years.
 Q. Will you give me the years during which you served in the Legislature, first in the Assembly and afterwards in the Senate? A. 1895, 1896, 1897 and 1898.
 Q. In the Assembly? A. In the Assembly, yes, sir.
 Q. And what years in the Senate? A. 1899, 1900, 1901, 1902, 1903, 1904, 1905 and 1906.
 Q. When you were in the Senate were you a member of the Committee on Railroads? A. Yes, sir.
 Q. During what years? A. I could not tell you that.
 Q. I show you the Legislative Manual for 1900, and ask you

you served as a member of the Committee on Railroads that year?

A. Yes, sir.

Q. I also show you the Legislative Manual for 1901; were you a member of the Committee on Railroads that year? A. Yes, sir.

Q. I show you the Legislative Manual for 1902; were you a member of the Committee on Railroads that year? A. Yes, sir.

Q. I show you a copy of the Legislative Manual of 1903; were you a member of the Committee on Railroads that year? A. Yes, sir.

Q. I show you a copy of the Legislative Manual for 1904; were you a member of the Committee on Railroads that year? A. Yes, sir.

Q. I show you a copy of the Legislative Manual for 1905; were you a member of the Committee on Railroads that year? A. Yes, sir.

Q. Then you served as a member of the Committee on Railroads during the years 1900 to 1905, inclusive? A. Yes, sir.

Q. Were you acquainted with G. Tracey Rogers? A. Yes, sir.

Q. How long did you know Mr. Rogers? A. I think about eleven years.

Q. When did this acquaintanceship commence? A. It was either in 1898 or 1899, I won't be positive.

Q. Either in 1898 or 1899? A. Yes.

Q. And you were acquainted with him during the years when he was president of the Street Railway Association of the State of New York? A. Yes, sir.

Q. As president of the Street Railway Association he has stated that it was one of his duties to look after legislation at Albany; he frequently appeared, did he not, before the Committee on Railroads of the Senate in regard to legislation? A. Yes, sir.

Q. Affecting street surface railways in the State of New York? A. Yes, sir.

Q. You saw him frequently about the Capitol and about Albany at other times, did you not? A. Yes, sir.

Q. Looking after the business of the Street Railway Association? A. Yes, sir.

Q. And of the railways? A. I presume that is what he was doing; I don't know.

Q. You have heard him talk, have you not, Senator, with other members of the Legislature and yourself in regard to legislation that was pending? A. I don't remember that I did.

Q. Mr. Rogers was pretty active during those years, wasn't he, Senator? A. I could not tell you that.

Q. He was frequently about the Capitol, was he not? A. I saw him there frequently, yes, sir.

Q. And he was frequently seen about the principal hotels in the city of Albany, was he not? A. The principal hotel, you mean the Ten Eyck?

Q. The Ten Eyck. A. I don't know that; I have seen him down at the Stanwix Hall, that is where I stopped.

Q. Were you acquainted with the firm of Ellingwood & Cunningham? A. Yes.

Q. When did this acquaintanceship commence? A. I think in 1900.

Q. And from that time until 1904 you had business dealings with that firm, had you not? A. Yes, sir.

Q. You have heard the evidence given here this morning by Mr. Carpenter, the bookkeeper of the firm? A. I cannot hear very well.

Q. You have heard some of it, have you? A. I heard some of it; some of it I did not understand at all.

Q. You were familiar with your account with the firm of Ellingwood & Cunningham during the time that you had an account there, were you not? A. It is so long ago — I am familiar with some of the items there, but I do not know that I am with all of them.

Q. You have seen a copy of it recently, have you not? A. I saw a copy of it, yes.

Q. Senator, if you have any explanation to make in regard to the evidence given here with relation to your account, the Committee wishes to afford you an opportunity now to make it. A. I have no explanation to make that I know of from anything that I have heard. I have my own evidence. If I am asked questions I will answer them to the best of my ability and knowledge.

Q. Who introduced you to the firm of Ellingwood & Cunningham — that is all you have to state, you have nothing further, I did not interrupt you? A. No.

Q. Who introduced you to the firm of Ellingwood & Cunningham? A. I could not tell you.

Q. Did you know both Mr. Ellingwood and Mr. Cunningham? A. I knew them both.

Q. Do you recall the circumstances under which you first became acquainted with either of them? A. I don't remember; I do not.

Q. Your account started April 6, 1900, did it not? A. I think so, according to their account there.

Q. I show you leaves from the loose leaf ledger of Ellingwood & Cunningham on which your account appears as identified by Mr. Carpenter, and ask you whether that did not start on April 6, 1900? A. That is the way it appears here.

Q. Did you know at that time that G. Tracy Rogers was a special partner in the firm of Ellingwood & Cunningham? A. I don't know whether I did or not.

Q. Do you recall whether or not it was not he who introduced you to the firm? A. I don't think he did.

Q. Who do you think did so? A. I haven't the slightest idea of who did it, but it runs in my mind that some of the Senators or Assemblymen did it.

Q. Some one connected with the Legislature? A. Yes, sir.

Q. Now, referring again to the original sheets of your account which are before you, Senator Goodsell, do you think this introduction took place in Albany? A. I think not.

Q. Or is it your recollection that some member of the Legislature referred you to the firm or recommended the firm to you? A. No, I think the way that occurred was, I was standing on the steps leading to the firm of Kerr, Richmond & Company.

Q. They are stock brokers in Albany? A. No, they were at 41 and 43 Wall street.

Q. Did they have an Albany house? A. I don't know that they had. Someone came along, I don't remember who, and asked me where I was going, and I said "In here," and he said, "Come up-stairs," but I cannot remember now who that was. I have tried to ever since this thing began, but I have not succeeded in remembering who it was. Whoever it was introduced me to Mr. Ellingwood and Mr. Cunningham.

Q. Are you sure it was not G. Tracy Rogers? A. I am sure it was not he — I didn't know him very well at that time.

Q. What date was this? A. Sometime in the spring of 1900.

Q. Mr. Rogers when he was on the stand, if my memory serves me correctly, said that his recollection was that he introduced you to the firm. Do you think now that he was in error? A. Yes. I would have remembered if Mr. Rogers had introduced me — I would have remembered the circumstance.

Q. I saw a book of Ellingwood & Cunningham in which they had a list of the gentlemen who introduced various gentlemen to them, and under the name of Mr. Rogers appeared your name as having been introduced by him. Would that refresh your recollection? A. He may have introduced me afterward, but I am speaking of the first introduction to Ellingwood & Cunningham.

Q. Now, when you went up there this first day that you have spoken about, did you make any purchase that day? A. No.

Q. How soon after that did you make any purchase? A. I think the first was April 6th.

Q. How long was that after you had first visited the firm? A. That was probably two or three months — maybe four months.

Q. Do you think that in the meantime you had met Mr. Rogers and been introduced by him to the firm? A. No, I don't remember that.

Q. The first day you were there which member of the firm did you meet? A. I saw Mr. Cunningham, and I saw Mr. Ellingwood.

Q. Do you recall whether between that time and the date of the opening of your account you again visited their place of business? A. No — I was not there frequently.

Q. Do you think you were there at all between the first day you were there and the date you opened your account? A. I don't recollect.

Q. But you are quite positive, are you, that Mr. Rogers in the meantime had not introduced or recommended you to the firm? A. I don't know whether he recommended me or not, but I have no recollection of his introducing me.

Q. I note, that your first purchase, referring again to your account, was on April 6th, 1900, when you bought 100 Transportation? A. Yes, sir.

Q. Without any margin — can you tell me how that occurred?

A. Well, I don't think I was at the firm when that was bought, that is, I told them that I would buy 100 Transportation.

Q. Told whom? A. I think Mr. Cunningham.

Q. On the date of your first visit? A. No.

Q. How long before the purchase was made? A. Well, I can't say exactly.

Q. You told him you would buy 100 Transportation? A. I told him I would buy 100 Transportation, but I would not buy it until after the Legislature adjourned.

Q. Do you know what date the Legislature adjourned that year?

A. No, I do not.

Q. Well, the Legislature in that year adjourned upon that date?

A. April 6th?

Q. Yes. How long before the Legislature adjourned do you think this conversation with Mr. Cunningham occurred? A. I don't know, it was shortly before the Legislature adjourned if it was April 6th.

Q. Would you say three or four days? A. More than that.

Q. A week? A. Well, I can't tell you exactly.

Q. Well, give me your best recollection, Senator? A. This is nine years ago, and I have had a whole lot of other things to think about and worry about, and that has passed out of my mind, and I am not so good on the recollection.

Q. I will call your attention, Senator, to these facts and see whether it in any wise refreshes your recollection both as to the conversation and as to the time when you had the conversation with Mr. Cunningham, and when you told him you would not purchase the stock until the Legislature adjourned. Do you recall having introduced on Friday, March 16th, 1900, a bill in the Senate entitled "An Act to amend the Transportation Corporation Law by the addition thereto of a section in relation to the existing routes and extensions"? A. I remember the bill, because I have looked it up since this investigation has been going on.

Q. Do you recall that this bill passed the Senate on the 29th, thirteen days later? A. I heard you say that here, and I presume that was the case.

Q. Let me see if I can refresh your recollection. I show you

Senate Journal, 123rd Session, 1900, Volume 2, calling your attention to what appears on page 1452: Does it not appear that on that day, Thursday, March 29th, bill No. 1332, entitled "An Act to amend the Transportation Corporation Law by the addition thereto of a section in relation to the existing routes and extensions" was passed and delivered to the Assembly? A. That is right, yes, sir.

Q. Which was thirteen days after its introduction, a recess over Sunday having been taken. Do you recall that that bill passed the Assembly on April 5th, the day before adjournment? A. No, sir, I do not. Whatever is on the Journal there is all correct.

Q. Just to make the record complete, I show you the Assembly Journal, 123rd Session, 1900, Volume 4, and call your attention to what appears on page 3484, under date of Thursday, April 5th. Does it not show that the same bill, No. 1332, entitled "An Act to Amend the Existing Corporation Law by the addition thereto of a section in relation to the existing routes and extensions," on motion of Mr. Bedell, was passed? A. That is right there.

Q. And the next day the Legislature adjourned, on the 6th, did it not. The Legislature adjourned on Friday, April 6th, did it not? I call your attention to the Senate Journal, 123rd Session, 1900, Volume 2, at page 1898, Friday, April 6th, the clerk declared the Senate adjourned without date? A. Yes.

Q. Now, on that date you made this purchase of 100 Transportation. Now, does that refresh your recollection in relation to the time when you had this conversation as you said with Mr. Cunningham, stating that you would not buy the Transportation until the Legislature had adjourned, the bill having passed the Legislature the very day before its adjournment? A. It is here in his book, April 6th, and I did purchase 100 shares of Transportation.

Q. And you did tell him you would not purchase it until after the Legislature adjourned? A. Yes, sir.

Q. The bill having passed the day before the Legislature adjourned, thereupon became a thirty day bill, did it not? A. Yes, sir.

Q. From whom did you receive this bill — you introduced it in the Senate, did you not? A. I did.

Q. From whom did you receive the bill? A. I think from Senator Coggeshall.

Q. How long before its introduction? A. I think only a short time, I don't know but what it was the same morning that I introduced it.

Q. Was Senator Coggeshall a member of the Senate at that time? A. He was, he was Chairman of Miscellaneous Corporations.

Q. Chairman of the Committee on Miscellaneous Corporations? A. Yes, sir.

Q. Was the bill when you received it from Senator Coggeshall in the same form as it was when you introduced it? A. Yes, sir.

Q. To which committee was it referred, do you remember? A. I think it was referred to Miscellaneous Corporations.

Q. The committee of which Senator Coggeshall was the chairman? A. Yes, sir.

Q. Did the Senator make any statement to you as to why he wished you to introduce the bill, instead of introducing it himself, it coming to his committee? A. No, he handed me the bill and asked me if I had any objections to introducing it. I looked it over and I didn't see anything wrong about it, and I said "I will introduce it."

Q. You introduced it the same day? A. I think it was the same day.

Q. Was that all he said in reference to it? A. That it all.

Q. Did he say anything about what committee he thought it would go to? A. No, I think not.

Q. Did he say where he got it from? A. No.

Q. Senator Coggeshall at that time represented a district in which Oneida county is included, did he not? A. I think that was his district.

Q. Did he state any reason for his anxiety, in representing the Oneida county district, in relation to Transportation here in the city of New York? A. No, he didn't say anything about it.

Q. Did you inquire of him why he wished the bill introduced? A. No. I don't think he was very anxious about the bill.

Q. Did you inquire of him why he wished the bill introduced? A. No, because it was customary there for one Senator to introduce a bill handed to him by another Senator if it was a good bill.

Q. It is customary for one Senator to introduce a bill handed to him by another Senator, you say? A. Yes, sir.

Q. If it is a good bill? A. Yes, sir.

Q. Well, if it is a good bill why doesn't he introduce it himself? A. Well, he probably had some reason, he may have had so many bills, I don't know his reason.

Q. Did he give you any reason? A. No, I didn't ask him for any.

Q. Didn't it occur to you as rather extraordinary that an up-State Senator should be introducing a bill with such sweeping provisions in it in reference to Transportation in the city of New York? A. No, I didn't think there was anything wrong about it. I belonged to the same committee as he did.

Q. If he were chairman of the committee it would seem natural that the chairman should introduce it, would it not? A. I don't know as it would.

Q. Bills which are general in their character, or which by reason of their provision under the rules go to a certain committee would naturally be introduced by the chairman of that committee, if not introduced by the Senator representing the territory to which the bill referred or in which it was to operate, would it not? A. Why, no. I do not know that anyone requested it to be sent to the Miscellaneous Corporations. I didn't, and I don't remember as anyone else did. I think the clerk or the Governor handed it over.

Q. Did Senator Coggeshall tell you from whom he received the bill? A. No.

Q. Didn't you inquire? A. No.

Q. Was it typewritten or in longhand? A. It was typewritten.

Q. Was any name endorsed on the outside as to who would introduce it when you received it? A. No.

Q. It was in duplicate, was it? A. Yes, sir, and I wrote my name on it myself.

Q. Did it occur to you to inquire of him who was behind the bill? A. No, sir, it did not. I thought it was a good bill. I had only been in the Senate a short time.

Q. You were representing then what is known as the Newburgh district, including the county of Orange? A. You all call me from Newburgh, but I am not from Newburgh. I am from Highland Falls. It is the 23rd District.

Q. What counties does it include? A. Rockland and Orange.

Q. Representing those districts, did you feel that you were charged with any particular duty to look after the state of Transportation in the city of New York? A. That never occurred to me at all. As long as I looked after my own district I had a perfect right to look after somebody else's, I suppose.

Q. Had you studied carefully the existing Transportation problems here in the city of New York at that time? A. I was pretty well conversant with them, yes.

Q. Did you know what the effect of the bill was? A. I did.

Q. Did you know what the bill did? A. Yes.

Q. And what it was intended to do? A. Well, that I could not tell you.

Q. But you knew what it did, did you? A. I know what the bill did.

Q. You knew that it affected the New York Transportation Company which was operating stages on Fifth avenue in the city of New York? A. I knew that, yes.

Q. Did you realize the importance of the bill to that corporation? A. I did not, any more than I did to Fifth avenue. I thought Fifth avenue ought to have stage facilities for people that wanted to ride. They didn't have any trolley and I thought they ought to have it.

Q. Now, they had stage facilities then, had they not, operated by this company? A. Yes.

Q. This was intended, was it not, to broaden without limit those facilities, so that it did not refer to the Fifth avenue problem? What streets did you have in mind that at that time needed the extension of service which was being given by this company to people traveling on Fifth avenue? A. I had Fifth avenue in mind mostly.

Q. But they were operating on Fifth avenue and they wanted to go on other avenues. What other avenues did you have in mind needing their services? A. Oh, I don't remember any other avenue. They wanted motive power, other than horse power. They had horse power stages there, and that was one of the provisions of the bill.

Q. Who told you that? A. I saw it in the bill.

Q. Did anyone speak to you about the bill? A. No, sir.

Q. No one except Senator Coggeshall? A. No, sir. In fact I didn't pay much attention to the bill until it had passed or was about to pass.

Q. You introduced it and moved it, did you not? A. I did.

Q. And moved it rather rapidly and very successfully? A. Now, you are conversant with legislative duties and ways.

Q. Yes. A. You know that toward the latter part of the season if they think the Legislature is going to adjourn at a certain day they will get the bills through if possible. Now, I did only what other Senators did and only what I thought was my duty in regard to it. I introduced the bill —

Q. I was commending you for your diligence and the rapidity with which you moved the bill? A. I think there was a good deal of sarcasm in that.

Q. No, I didn't mean it so. I said you moved it very rapidly. The bill never went to the Committee of the Whole, did it? A. No; if a Senator can possibly avoid a bill going to the Committee of the Whole, he will do so.

Q. If this bill had gone to the Committee of the Whole in that session, it might as well have gone into the basement of the Capitol, might it not? A. Well, yes, sir, at that time.

Q. Didn't it occur to you that a bill of such tremendous importance to the people of this municipality, the greatest municipality in the State, should have been carefully considered by the Committee, the city authorities notified and opportunity given them to have been heard upon it, and the bill thoroughly threshed out in Committee of the Whole, and not only before the Committee to which it was referred, but also by the Committee of the Whole? A. Yes, but the city has its counsel up there and the Citizens' Union have their counsel there, and if there had been anything objectionable in that bill to the city or to the people here that you mention why, they would have protested. There was never a protest made, and I don't think there was any objection to the bill — I don't think there was a vote against it.

Q. Now, it was introduced on Friday, March 16th, that is a short legislative day at the end of the week, is it not? A. Friday?

Q. Yes. A. Yes, sir.

Q. Now, the Senate adjourned over from Friday until Monday? A. Well, it might have at that time, but it does not always. Sometimes they have Saturday as a legislative day.

Q. Referring again to the Senate Journal, 123rd Session, 1900, Volume 2, under the record of Saturday, March 17th, do you find there that the Senate met pursuant to adjournment, that there was no clergyman present, that the Journal of yesterday was read and approved, that Senator Ellsworth moved that the Senate adjourn till Monday? A. Yes, that was on Saturday.

Q. There was a meeting on Saturday, but no business transacted, was there? A. Yes, that was probably agreed to.

Q. Now, the bill passed the Senate on Thursday, the 29th, just thirteen days after its introduction. You say during that time there was no protest against it. Do you recall, Senator, whether or not there was any opposition to the bill after it passed both houses? A. It runs in my mind that there was a misprint of the bill, and it was sent back and amended. I am not positive of that.

Q. Do you recall whether or not after the bill had passed both houses and was pending before the Executive that there was any opposition to the bill? A. No.

Q. Do you recall whether or not there was any newspaper criticism of the bill, and the broad rights which it gave in other streets than Fifth avenue to this company? A. I do not recall that.

Q. I will endeavor to refresh your recollection if possible, Senator, later upon that point. I have not the extract here at present. Now, Senator Coggeshall is dead, is he not? A. Yes sir.

Q. Now, after Senator Coggeshall had given you the bill, and it had been referred by the President of the Senate to the Committee on Miscellaneous Corporations of which he was chairman — you were also a member of that Committee, were you? A. I was.

Q. Did the bill come up for discussion in the Committee? A. It did.

Q. What did Senator Coggeshall say in regard to it? A. Why, he just read the bill and asked what would be done with it, whether to report it or not.

Q. What did the Committee do? A. The Committee voted to report it.

Q. Was that all that transpired? A. Yes, sir. They read the bill, they all had the bill before them, and they read the bill.

Q. Was it read aloud? A. Yes, the clerk read the bill aloud.

Q. Did he read the bill through, or just read the title? A. He read it through.

Q. During your experience in the Senate, Senator, was it the custom or rule for clerks of Committees, or Committees through their clerks, to keep a record of their proceedings? A. Yes, sir.

Q. That is a complete record of what transpired in the Committee room? A. Yes, sir.

Q. There was no discussion on this bill then further than the request of the Chairman, or the inquiry rather, of the Chairman as to what was the wish or will of the Committee, and after that the bill was read through, and the Committee voted to report it? A. There was no further discussion, only the reading of the bill.

Q. Then the bill was reported out upon the floor and placed upon the order of third reading, or restored to the order of third reading? A. Yes, sir.

Q. And came up in its regular order for passage and was passed? A. Yes, sir.

Q. Do you recall whether there was any discussion in the Senate on the bill? A. In the Senate?

Q. That is to say when it came up on its passage? A. There was no discussion in the Senate on the bill.

Q. Why, that was a very important bill, was it not, Senator? A. Why, I hear now that it is.

Q. It affected a great community, did it not? A. Yes, sir.

Q. And it gave great and powerful rights and valuable rights to a corporation in the City of New York? A. If it did, they certainly have not taken advantage of it.

Q. And you say there was not one word of discussion, either in the Committee or on the floor of the Senate, in regard to the merits of the bill? A. Now, you say not one word. There may have been a word or two. Somebody may have asked a question. There was no discussion of the bill in the open Senate.

Q. Now, do you recall, Senator, that after your bill came over

to the Assembly, that it reached the Assembly after the Committee on Rules had taken charge, do you recall that? A. No, I do not.

Q. Do you recall that Mr. Bedell, representing the Second District of Orange, which was included in your senatorial district, moved the bill? A. Mr. who?

Q. Mr. Bedell? A. Well, I want to say that as a matter of record, I don't know. I presume he did, though.

Q. Now, do you recall having had any conversation with Mr. Bedell about this bill? A. I did not.

Q. Either before or after its introduction? A. No, sir.

Q. Now, after Mr. Bedell had secured the bill being reported by the Committee on Rules, don't you recall that Assemblyman Fitzgerald, from the City of New York, rose in the Assembly and denounced it in terms very severe, even using the word that it was a graft bill? A. I don't remember it.

Q. You followed the proceedings of the Assembly at that time, did you not? A. Why, I did probably, to a certain extent.

Q. Well, you would certainly follow the fate of your bill? A. What?

Q. You certainly would follow the course and fate of your bill in the other house? A. Oh, yes.

Q. Don't you think you probably learned at that time, that this bill which had been handed you by Senator Coggeshall, and went through the Senate with little or no discussion, had been so savagely attacked by an Assemblyman representing a part of the territory in which the bill was calculated to operate? A. I don't remember it at all. I don't remember that there was any opposition to the bill.

Q. Now, don't you recall that even after the bill had passed, Assemblyman Fitzgerald in the Assembly went so far as to move the reconsideration by which the bill was passed? A. I only seen it afterwards, here.

Q. And that that motion was lost? A. I didn't remember it at the time. I didn't remember any such circumstance until I read it here.

Q. And don't you recall that 25 Assemblymen, most of them from the City of New York, voted to reconsider the vote by which the bill was passed; do you recall that? A. I do not.

Q. Senator, did you have any conversation with Senator Coggeshall in regard to this bill, after the time he handed it to you and asked you to introduce it? A. I may have told him the bill had passed, but that was all.

Q. That is, that it had passed the Assembly or the Senate? A. The Senate. I don't remember at any time having any conversation with Senator Coggeshall in relation to this bill, or anyone else — not Mr. Bedell. Mr. Bedell looked after my legislation in the Assembly — my bills, and I looked after his bills in the Senate.

Q. Did not Senator Coggeshall tell you who wanted the bill? A. No, sir.

Q. Well, bills up in the Senate or Assembly, don't somebody appear, Senator? Somebody has to draft them and somebody wants the legislation, thinks it is good, and are there advocating it usually, are they not? A. Why, the Senator handed me the bills and said they were drawn, and, look over them, and if you will introduce it, I would like to have you do it. That is all that was said about it. I looked over the bills very carefully, and I found nothing in it that I thought was detrimental to the public — I thought rather that it was favorable to the public.

D. Did not you doubt somewhat your familiarity with the transportation problems down here, to the extent that you thought perhaps it would have been wise to inquire of some Senator here representing a New York district, as to whether or not it would be a good thing? A. Why should I do that, when they had their representatives there. Mr. Brady was there, and there were others there looking after the interests of New York City, and they could have protested against it. If they had protested against it, and I had thought it was genuine, I should not probably have introduced the bill.

Q. Yes, but if they were there looking after the interests of the City of New York, why did they not introduce the bill, if it was such a good thing for the people? A. I don't know why they did not. I did not know why it was handed to me. I can't tell you to-day who controlled the company.

Q. Supposing some New York Senator should introduce a bill affecting your district only, and seriously affecting it, it would put

you upon inquiry at once, would it not? A. Yes, sir, that I suppose they would do.

Q. But would not you consider it a breach of senatorial courtesy for a Senator to introduce a bill seriously affecting your district and operating only in your district, without consultation with you? A. No.

Q. You would not? A. No, for the reason that it is done often.

Q. Now, let me state that again. Would you not deem it a breach of senatorial courtesy, for any Senator to introduce a bill affecting territory only within your district, without any consultation with you, or without any intimation to you that he intended introducing such a bill? A. No, I think not. There was a bill introduced there by the present Lieutenant-Governor, that affected my district right in my own town.

Q. And affecting no other district? A. And affected no other district.

Q. Had you been asked to introduce the bill? A. No.

Q. Had you been approached in regard to the bill? A. No. I didn't know it was going to be introduced until it was read.

Q. Well, did not you consider such an action a breach of senatorial courtesy? A. No, because the party that had the interest in the bill came from the same city that he did, and not from my town, but from his city.

Q. I suppose the present Lieutenant-Governor was then a member of the Senate? A. He was a member of the Senate.

Q. The reason the present Lieutenant-Governor introduced the bill affecting your district and no other district, was because the people who wanted the legislation resided in his district? A. Yes, but he knew it was in my town.

Q. Did the people, the person or persons who wanted this legislation, reside in your district? A. Why, no.

Q. Are you quite sure? A. Why, I am sure.

Q. Did they reside in Senator Coggeshall's district? A. No. Oh, you mean this bill?

Q. Yes. A. I thought you meant the other.

Q. Did the person or persons, interest or interests which wanted this Transportation bill, reside in your district? A. Why, no. Now, let me explain.

Q. I am going to give you a chance to explain. Did the person or persons who wanted this legislation reside in Senator Coggeshall's district? A. I don't know about that.

Q. You never inquired? A. Why, no. I didn't know anything about what Coggeshall did, or what he intended to do.

Q. Now, the explanation, Senator. A. Why, I considered that that bill affected the country, the State of New York, just as much — perhaps not as much as the City of New York — but it affected them, and they had interests in that, as every public citizen has in Transportation, no matter where it is. I am in New York pretty near three or four or five days in the week, and lived here at one time.

Q. How long ago? A. Oh, many years ago.

Q. How many years. You stated that you had been living 60 years at Highland Falls? A. Yes, sir.

Q. How many years is it since you lived in New York? A. Forty years.

Q. Forty years? A. About that.

Q. Of course, this transportation problem which this bill was calculated to solve, did not exist at that time, did it Senator? A. No.

Q. Now, section 23 of the bill reads as follows: "Existing Routes and Extensions. Any corporation incorporated under any of the laws of this State heretofore enacted, which owns and operates a lawfully established stage route, which has been continuously operated by such company, or its predecessors entitled to such route for five years last past, in the cities of the first class, is hereby authorized," etc. That could only refer to two cities, Buffalo and New York, could it? A. Yes.

Q. Did you know of any company that was operating a stage route and had operated it continuously for five years in Buffalo? A. No.

Q. Then it could only refer to one corporation — to one city, could it? A. Yes, that's what I supposed.

Q. And you were not at that time representing any portion of the territory of the City of New York? A. Not then.

Q. I understood you to say, Senator, that there were no hearings had on the bill? A. I don't know of any.

Q. Do you recall whether there were any hearings had during the time the bill was pending before the Executive? A. No. I never went to the Governor to see about the bill.

Q. Why, you did not leave the bill to its fate, did you, Senator, after you passed it? A. No. I left it to the Governor to sign or not sign.

Q. This bill that you considered to be such an important bill, you left to its fate before the Governor? A. I did not say that I considered it such an important bill.

Q. Well, important enough for you to father it and introduce it, and seek its passage, and after it was introduced, you paid no further attention to it? A. I did not.

Judge BRUCE: That is all for to-day. I will take up the question further, and also the subject of your account, Senator, at the next hearing.

Chairman MERRITT: The witnesses will, without further notice, hold themselves in readiness next Wednesday, the 14th, at 11 o'clock. The Committee is adjourned for to-day.

Adjourned to Wednesday, September 14th, 1910, 11 A. M.

FOURTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,

NEW YORK, September 14th, 1910, 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman.*

HON. ALEXANDER BROUGH, *Vice-Chairman.*

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel.*

ALFRED HURRELL, ESQ., { *Assistant Counsel.*

ISIDOR J. KRESEL, ESQ., }

Chairman MERRITT: The Committee will be in order.

LOUIS F. GOODSSELL, recalled.

Examination by Judge Bruce continued:

Q. Senator, do you recall having introduced in the Senate, on Thursday, January 29th, 1903, a bill entitled "An Act to amend Section 90, Chapter 565 of the Laws of 1890, entitled 'An Act in Relation to Railroads, constituting Chapter 39 of the General Laws and the Acts Amendatory thereof, relating to Street Surface Railroads' " Introductory Number 177, which was read the first time, and by unanimous consent, also read the second time, and referred to Committee on Railroads — do you recall the bill?

A. I do not.

Q. This bill, Senator, amended section 90 of the Railroad Law, and this section then had to do with the manner in which street railroads could extend their lines. It brought under the railroad law, all corporations organized and existing under any law. Now, the amendment incorporated in the bill, purposed to change this, to provide that any street railway corporation organized under any general or special law should continue to have all the rights, privileges, and easements conferred or acquired by such law, or its amendments, as well as the rights and privileges conferred by the Railroad Law, and it further provided that a statement of proposed extensions of routes could be made and filed, whether before or after the consent of the local authorities had been obtained. Now, the bill was reported from the Committee on Railroads on February 12th, 1903, and went to the Committee of the Whole, and came up in the Committee of the Whole on Wednesday, February 25th, 1903, and after some time spent in discussion, it was reported to the Senate, incorporated in the report from the Committee of the Whole, and ordered engrossed for the third reading, and on the following day, Thursday, the 26th, it was reported from the Committee on Engrossed Bills, and later went to the Calendar, and on March 23rd you moved to have the bill recommitted to the Committee on Railroads, retaining its place on the order of third reading, which was carried in the affirmative, and there the bill rested, nothing further was done in relation to it. Do you recall the bill, and its progress? A. I do not.

Q. Do you recall from what source you received the bill? A. I do not remember the bill.

Q. You don't remember it at all? A. No, sir.

Q. Will you endeavor, if possible, to refresh your recollection in regard to it, and if you are able to do so, to give me your recollection at a later hearing, in regard to the bill? A. Yes, sir.

Q. I will provide you with a copy of the Senate Journal during recess, and possibly, Senator, something in that might refresh your recollection? A. Possibly.

Q. What I am anxious to find out is, who was behind that bill, the source from which you received it, the people who were advocating it. That is what I am anxious to ascertain. Now, Senator, I show you three of the leaves from the loose-leaf ledger

of Ellingwood & Cunningham, in which are entered your account, and will you kindly hold them in your hand in order that I may examine you in regard to the different items. I note that the account opens on April 6th, with the purchase of 100 Transportation at 11, concerning which I examined you at the last hearing. You stated that you thought this Transportation was purchased without your knowledge at the time, that you had stated to Mr. Cunningham that you would not purchase any Transportation until after the Legislature adjourned, and the Legislature adjourned on the 6th, and on that day 100 Transportation was purchased by them for you at 11, making \$1,112.50. Now, you will note, Senator, that the next item of the account is on April 17th, 1900, a credit of \$300? A. Yes, sir.

Q. Do you remember how that was paid in? A. That was a loan, money that I had advanced to Mr. Rogers.

Q. And when did you loan it to Mr. Rogers? A. I can't tell you exactly, probably three or four weeks, or a month before that.

Q. Where did the loan take place? A. At Albany.

Q. What were the circumstances under which the loan was asked for? A. I don't just remember that — I don't know that he asked for the loan. I advanced the money on the payment — my recollection is — on a payment that he owed.

Q. That he owed you? A. Yes, sir.

Q. Did he owe you at the time you made the loan? A. Yes, sir.

Q. How much did he owe you? A. I think it was three hundred dollars.

Q. And you on that day loaned him three hundred dollars more? A. No, I loaned him three hundred dollars, that is, I advanced that money for him.

Q. To whom? A. I can't tell you now, I don't remember.

Q. For what purpose? A. I don't recall.

Q. In what manner? A. Cash.

Q. In cash? A. Yes, sir.

Q. Did you hand the money to Mr. Rogers, or did you deliver it to the person whom he was indebted to? A. My recollection is, he asked me to pay this money, but it was a small amount, and I didn't pay much attention to it.

Q. Did you pay it in eurrency, that is, was it cash or by check?
A. I paid it in cash. I am not positive about that, it might have been a check.

Q. Where did you keep your bank account at that time?
A. Highland National, Newburgh.

Q. Did you have a bank account with any other institution?
A. No.

Q. Then you always kept your bank account with the Highland National, in recent years, say during the past fifteen years?
A. Yes, up to three years ago.

Q. Prior to that time, say for ten or fifteen years, you kept your only bank account with the Highland National? A. Yes, sir, for forty years.

Q. Now, you preserve, do you, Senator, your check books?
A. One moment — I did have an account down here in the North River Bank.

Q. The North River Bank? A. Yes, that was just a short time, probably less than a year.

Q. What year would you say, Senator? A. That was in — I think that was in 1883.

Q. And after that time, you had your account, until three years ago, in the Highland National? A. Well, I had an account there also.

Q. Senator, I presume you have your check books and your deposit books? A. After I changed my bank in Newburgh, I destroyed all the bank books and checks.

Q. When was that? A. About three years ago.

Q. You haven't anything back of three years, then, at all?
A. No, sir.

Q. What would be your best recollection as to whether you gave this money to Mr. Rogers in cash or by check? A. I cannot tell you.

Q. And can you tell me whether you made the check payable to him, or to the party to whom he owed the money? A. I might have made it payable to him, I am not clear on that point, I am not clear about the transaction. I think I met him at the depot.

Q. In Albany? A. Yes sir.

Q. You met Mr. Rogers? A. Yes, sir. I think it was in the depot.

Q. Now, is it your recollection, Senator, that you gave the money to Rogers, or did you pay the money to whom Rogers owed? A. I think I paid the money to the person whom Rogers owed.

Q. Now, who was that person? A. I could not tell you.

Q. Was it an Albany party? A. I could not tell you.

Q. A member of the Legislature? A. No, sir.

Q. If you don't remember who it was, how do you know that it was not a member of the Legislature? A. Well, not a member of the Legislature because the transaction was, I think, a personal affair. I am not positive and I would not like to state.

Q. Now, did you know the nature of the obligation existing between Mr. Rogers and the party to whom you paid it? A. Why, I don't know. My recollection is that he asked me to advance that money to some party, but I don't remember who it was, and I don't remember anything more about the transaction. I asked him to place it to my account down there. I had purchased 100 Transportation, and to place it in my account there,

Q. Your note that was on April 17th, 1900, that he made the deposit, Senator, and that the purchase was made upon the 6th. Now, how long after your purchase was made, and how long before April 17th do you think that it was that you made the payment on account of Rogers to the person to whom he was indebted? A. Why, I think I made that payment —

Q. A month? A. Perhaps two. I am not positive about the time.

Q. That is, two months before April 17th? A. Well, one month, or two months, or six weeks. I could not tell you. It is a matter that has slipped my memory. I just remember the transaction, seeing it there, and the transcript I had of it.

Q. Was the party along with Rogers at the time, the party to whom you paid it? A. No. If he had been, I suppose Rogers probably would have paid it.

Q. How long after you saw Mr. Rogers at the depot did you meet the party to whom he directed you to pay the money, and pay it to him? A. Oh, I don't know that.

Q. Well, would you say a few days or a week, or what would be your recollection? A. I could not tell you anything about it.

Q. Did Mr. Rogers say anything in regard to its being the result of a wager or a stake that he owed? A. He did not say anything about it, except he asked me for the payment, that is all.

Q. Did he say whether it was any money that he had lost in a wager or at play? A. He did not say.

Q. Simply said he owed this party \$300 and wished you to pay it? A. Yes, sir.

Q. Did not it seem quite extraordinary to you, Senator, that a man of Mr. Roger's business experience would be asking you to go and pay someone that he owed \$300? A. Well, I was frequently asked to do that.

Q. Had you done it before for Rogers? A. No.

Q. Did you ever do it afterwards for Rogers? A. I think there is a transaction in there of \$500 that I paid.

Q. Under the same circumstances? A. Why, I don't know what the circumstance was in regard to that.

Q. Are those the only two occasions on which you remember having paid obligations of Mr. Roger's at his request? A. That is all.

Q. Now, Just after a moment's reflection, Senator, do you recall whether or not Mr. Rogers said to you that this was a result of loss at play, or a wager? A. I don't remember anything about that.

Q. Well, did you know anything in regard to the nature of the indebtedness? A. Why, I could not tell you that.

Q. Were you present when it was incurred? A. No, sir.

Q. Do you recall ever being present when any indebtedness, this indebtedness in particular, was incurred from Rogers to this unknown person? A. No, sir.

Q. Could you give us a description of the man, Senator? A. No, I could not. If I could, I could give you the name.

Q. I presume so. And could you tell me where you paid it, whether in Albany or somewhere else? A. I could not tell you that. The circumstance has slipped my mind entirely, except when I saw the \$300, I had a recollection of paying \$300 for Mr. Rogers.

Q. Now, it appears from the books of Ellingwood & Cunning-

ham, that this 300 credited to your account April 17th was a part of the proceeds of \$3,000 which Mr. H. H. Vreeland had deposited with Ellingwood & Cunningham. Did Mr. Rogers tell you of the source from which the \$300 came? A. He did not.

Q. He never said anything about it? A. No, sir.

Q. Did you have any knowledge of it, did you ever have any knowledge of the source of it until what I have stated to you to-day? A. Why, no. I didn't know Mr. Vreeland. Never met him.

Q. Did not have any business transactions with Mr. Vreeland?

A. I would not know him if I saw him.

Q. Were you acquainted with Mr. Henry A. Robinson, general solicitor of the Metropolitan, and also an officer of the Street Railway Association of the State of New York? A. I was not acquainted with him at that time.

Q. You subsequently became acquainted with him? A. I met him once in Albany, once in Erie.

Q. Do you remember in what year, Senator? A. No, I do not. I was merely introduced to him, and knew him as a lawyer. I did not know what he was connected with.

Q. \$2,375 also of the proceeds of this \$3,000 check was placed to the credit of the account of Mr. Louis Bedell, in payment of 200 shares of Transportation which he had bought at that time. Did Mr. Rogers ever say anything to you about that? A. No, sir.

Q. And the remaining \$325 was paid to the credit of Mr. Rogers himself. I presume he did not speak to you in regard to that, not having spoken to you in regard to the other? A. No, sir.

Q. Do you know any means by which your recollection could be refreshed, Senator, in regard to this person to whom the \$300 was paid? A. Why, I presume Mr. Rogers might remember it. I don't know.

Q. Now, this credit was on April 17th, 1900. You will note, Senator, that there are no other transactions in your account except the charging of interest from month to month until October 12th, 1900, when you were credited with margin, \$500. Did you pay this by check or in cash? A. No, I don't know whether that was the \$500 that I advanced to Mr. Rogers, or whether I sent it — whether I paid it in cash or whether I sent it back.

Q. Well, what would be your best recollection in regard to that? A. October 12th, 1901.

Q. 1900. Did you see Mr. Rogers around the fall of the year 1900? A. I don't remember. Oh, yes, 1900, in the fall of 1900, I did.

Q. Where? A. I saw him at the Fifth Avenue Hotel.

Q. Did you have any business transactions with him? A. I did.

Q. Of what nature? A. Why, I advanced some money to the State Committee for him.

Q. How much? A. About \$10,000, I think.

Q. To the Republican State Committee? A. Yes, sir.

Q. How was that money paid? A. Why, it was paid by installments.

Q. By check or by cash? A. My recollection is, I paid him in cash. I paid him one \$5,000 in cash, and I think I paid him \$4,000 — I think that was in cash.

Q. You say you paid this for Mr. Rogers? A. I paid it. That was a contribution of Mr. Rogers made with Mr. Fox.

Q. From Mr. Potts, Treasurer of the Committee? A. He was the secretary, Reuben L. Fox, and he did not have the money at that time, and Mr. Fox wanted it and needed it, and I advanced it for him by installments, and he was to pay me back when he received it from the different companies that he represented.

Q. That was not a personal contribution then by Mr. Rogers? A. No, I think not.

Q. It was a contribution, was it not, from the street surface railways to the State of New York? A. I understood it that way.

Q. \$10,000? A. Yes, sir.

Q. You remember you paid one \$5,000 installment. Do you remember about the other that was paid? A. I think it was early in September.

Q. That is, 1900? A. Yes, sir.

Q. In what amounts and what times was the remaining \$5,000 paid? A. I think I paid \$4,000.

Q. How long after you had paid the five? A. I think that was in October.

Q. And when did you pay the last thousand? A. I did not want to pay the other thousand, because I had not received the contribution, the money that was agreed on.

Q. That is, Rogers had not collected the five that you had already paid in and paid it over to you? A. He had not paid me, and I saw him and he said he would pay it directly.

Q. Did he state any particular companies that were to contribute this money? A. No.

Q. It was simply to be gathered from the members of the Street Railway Association? A. Yes, sir.

Q. You advanced that from your personal account? A. I told him I was going to buy some Transportation — no, I told him that he could place that to my account, and after he placed it to my account I told him I wanted to buy some more Transportation, but before that I had a payment to make, and I used some of the money — \$3,000, I think.

Q. Now, this credit was on April 17, 1900. You will note, Senator, there are no obligations in your account except the charging of interest from month to month until October 12, 1900, stocks were credited with margin 500.

Q. Did you pay this by check or in cash? A. I don't know whether that was the 500 that I advanced to Mr. Rogers or whether I sent cash — or whether I paid it in cash or whether I sent a draft.

Q. Well, what would be your best recollection in regard to it? A. About 1900.

Q. About 1900? A. About 1900.

Q. Did you see Mr. Rogers or not around the fall of the year 1900? A. I don't remember that I did — oh, yes, — 1900. In the fall of 1900 I did.

Q. Where? A. I saw him at the Fifth Avenue Hotel.

Q. Did you have any business transactions with Mr. Rogers at the Fifth Avenue Hotel at that time? A. I did.

Q. And of what nature were those transactions, Senator? A. I advanced some money to the State Committee for him.

Q. How much? A. About \$10,000 I think.

Q. \$10,000? A. Yes, sir.

Q. To the Republican State Committee? A. Yes, sir.

Q. How was that money paid, Senator? A. That was paid by installments.

Q. By check or by cash? A. My recollection is I paid it in

cash — I paid him one \$5,000 in cash and I think I paid him \$4,000, and I think that was in cash.

Q. You say you paid this to him, then — A. I paid it — that was a contribution that Mr. Rogers made to Mr. Fox.

Q. Mr. Fox, the treasurer of the committee? A. He was secretary I think, Reuben L. Fox.

Q. But he did not have the money at that time and Mr. Fox was in want of it and in need of it? A. No, he did not have the money and Mr. Fox was in need of it and I asked him if I advanced it when I might expect it back. He was to pay me back when he received it from the different companies that he represented.

Q. This was not a personal contribution by Mr. Rogers, was it, Senator? A. No, I think not.

Q. It was a contribution by him on behalf of and from all of the street surface railway companies of the State of New York? A. I understood it that way.

Q. The \$10,000? A. Yes, sir.

Q. And you advanced \$5,000 in cash in one installment. Do you remember about the date that was paid? A. I think it was early in September.

Q. And that is 1900? A. Yes, sir.

Q. In what amounts and at what times was the remaining \$5,000 of the \$10,000 paid? A. I think I paid him \$4,000 —

Q. How long after you paid the \$5,000 did you pay the \$4,000? A. I think that was in October.

Q. When did you pay the last thousand dollars? A. I didn't want to pay the other \$4,000 because I had not received the money that was agreed on.

Q. That is, Mr. Rogers had not collected the \$5,000 that you already had paid in and had not paid it over to you? A. He had not paid me, but I was to pay it and he said he would pay it directly.

Q. Did he mention any particular companies that were to contribute this money? A. No.

Q. He stated that it was simply to be from the members of the Street Railway Association, did he? A. Yes.

Q. However, you advanced it from your personal account.

A. I told him that I was going to buy some Transportation — no — I told him that he could place that to my account, and after he placed it to my account I told him I wanted to buy some more Transportation. But before that I had a payment to make and I used some of the money — \$3,000 of it.

Q. You used \$3,000 for what purpose? A. I think probably to buy real estate; I don't remember now. It is pretty near ten years ago — it is ten years ago.

Q. You say you can't recall for what purpose that \$3,000 was used? A. No, I think I bought some real estate.

Q. You bought some real estate? A. Yes, sir.

Q. Can you tell me where, in New York or where? A. No, up in my neighborhood.

Q. Up in your neighborhood? A. Yes.

Q. Now, as to this \$5,000 that you advanced, did you advance that from your personal funds, from your bank account in the Highland Falls Bank? A. No.

Q. Where did that come from? A. I think I sold some bonds down there and gave it to Mr. Fox, I gave to him the money, the \$5,000.

Q. Do you remember what house you sold the bonds through? A. No, not now.

Q. What other house besides Ellingwood & Cunningham did you have an account with? A. I did not have any.

Q. Then if you sold the bonds do you think you sold them to Ellingwood & Cunningham? A. Oh, no.

Q. Do you have no recollection of what institutions you sold them to, or what concern? A. I could not tell you now. They were bonds I could sell most anywhere.

Q. Were they railroad bonds? A. No.

Q. Municipal bonds? A. I think they were; yes, sir.

Q. Or were they — of what municipality? A. I think they were — I think they belonged up in our part of the country.

Q. Were they town bonds or city bonds? A. They were school bonds, I think.

Q. In the township of Highland Falls? A. Yes, sir.

Q. Can't you recollect, Senator, through what concern or house or brokerage firm you sold those bonds? A. No, I could not.

Q. How many did you sell? A. I think probably it was \$5,000.

Q. How long did you sell them before you made this contribution in September to the Republican State Committee? A. I did not make any contribution.

Q. I mean advancement. A. I think it was the same day that I — either the same day or the day after that I got the money.

Q. Did Mr. Rogers tell you how soon he could go around and collect the \$5,000 and return it to you? A. He didn't know how much I advanced.

Q. He did not? A. Oh, no.

Q. Didn't he tell you to advance \$10,000? A. Yes, he told me to advance \$10,000 and I did.

Q. He thought you advanced it all at one time? A. Yes.

Q. When you told him you advanced the \$10,000, did you tell him, Senator, you would advance it all at one time or in installments? A. No, he asked me if I would advance \$10,000; that Mr. Fox wanted money, and I went and saw Mr. Fox and he said, "Yes, I need it, I need it very badly." I told him I haven't got \$10,000, I will give you what I have, and I gave him the \$5,000.

Q. I think I asked you before, and if not I ask you now, do you recall whether you gave it to him in cash or in the shape of a draft? A. I?

Q. Yes, the \$5,000. A. I think it was in cash.

Q. Where had you gotten the currency? A. What?

Q. Where did you get the currency? A. I sold the bonds and they gave me the money.

Q. Now, Senator, after a moment's reflection, can't you think through what institution you sold the \$5,000 worth of bonds and received the currency and took it up and gave it to Mr. Fox? A. I think through a concern down in Pine street, in Nassau or Pine.

Q. What? A. In Nassau or Pine.

Q. Can you recall the name of the institution or the firm? A. No, I don't now.

Q. How did you happen to go there? A. Why, Mr. Felte up in Poughkeepsie, he made a bid on the bonds, and he did not take them at that time — up in Poughkeepsie he made a bid.

Q. Mr. Felter in Poughkeepsie gave you a bid on the bonds and did not take the bonds? A. He did not take them at that time and there were a number of brokers up there and I went around looking to place them.

Q. Yes? A. I found a concern finally that did take the bonds. I think maybe I could find that out by looking over my supervisor's books. I was supervisor at the time.

Q. You say that by looking over your supervisor's book you could find out. Would that be entered on your accounts as supervisor? A. They would be entered on my account if they were town bonds — they would be; if school bonds they would be entered in the school book.

Q. Did these bonds belong to you personally or did they belong to the school district? A. They belonged to me personally. I took them in exchange for some other matters which I had.

Q. Well now, if they belonged to you personally, Senator, why would a sale of them be entered in your account as supervisor? A. They were not entered in my account; they were entered to Mr. Felter and afterward transferred from Mr. Felter through the New Paltz to the Falls Bank, or over to the New Paltz Bank.

Q. They were transferred by him over to the New Paltz? A. Yes, if they were town; if they were school bonds they probably would be entered — I think I had to sign the docket — they would be entered from the school —

Q. You transferred them? A. I don't know which they were, whether school or town bonds.

Q. You appreciate that if they were school or town bonds they would have to be issued by the town or the school district and after they had been issued and you had purchased them and they became your private property. If they were not your private property how would you negotiate them through a brokerage house in New York city and have them entered in your supervisory accounts? A. I did not say that. I said perhaps I might get some information as to what brokers purchased these bonds from entries in my accounts as supervisor.

Q. From the fact that you have sold other bonds of the same issue? A. There were a number. We issued several different classes of bonds and they were purchased mostly in New York here.

Q. Did the same concern purchase large blocks of them? A. Oh, no; there were only small blocks, \$9,000, \$15,000.

Q. I mean, did the same concern here in New York purchase several large blocks or small blocks? A. I could not tell you that. They bid on them. They purchased them here and then they were transferred at Poughkeepsie and from Poughkeepsie they went through to New York.

Q. Can you tell what concern on Nassau or Pine street they were purchased by? A. No.

Q. Can you tell on which side of the street they were located? A. I could not tell you that.

Q. Can you recall who introduced you to them or the occasion of your going there? A. No, there was a young man — I have forgotten his name.

Q. Did this same concern ever before or afterward sell any bonds for you? A. No, I have had dealings with them since.

Q. You say you have had dealings with them since? How long since? A. I won't say that I have had dealings with the firm here in New York. Or whether it was some firm in Poughkeepsie, or whether it was the same firm or not that purchased these bonds. I don't know.

Q. What firm have you in mind now that you have had subsequent dealings with? A. I have had dealings with Lee, Kingston & Company.

Q. Lee, Kingston & Company? Where are they? A. I don't know just where I had that sale of bonds. They bought bonds for me.

Q. That is one? A. Yes, I mean for the last three years.

Q. Do you remember what street they are on? A. No, I couldn't tell you; I couldn't tell you now.

Q. Do you think that Lee, Kingston & Company were probably the firm that sold this block of \$5,000 worth of bonds for you which you advanced for Mr. Rogers? A. No, I do not know — I did not know them at that time. Then lately I have had some dealings with Hagan.

Q. Hagan? A. Hagan; I don't know where they are located.

Q. You don't know where they are located? A. No, I have had dealings with them, and then their agent was up there.

Q. Did it occur to you at the time you advanced this \$10,000 to the Republican State Committee for Mr. Rogers that he was then president of the Street Railway Association A. Yes

Q. Did it occur to you then why the surface railways were advancing ten thousand dollars to the Republican State Committee? A. It occurred to me in this way, that the Republican State Committee needed all the aid they could get and they were asking most everybody for currency.

Q. So you said that Mr. Fox told you, but did it occur to you then why the Street Railway Association was putting up this money for the Republican State Committee that the committee was in need of? A. It did not; no, sir.

Q. Did it occur to you why Mr. Rogers should come to you—you were then a member of the Senate, were you not? A. 1900?

Q. You were a member of the Senate? A. Yes.

Q. And you were a member of the Railroad Committee? A. Yes.

Q. Did it occur to you, Senator, why Mr. Rogers should come to you, you occupying the position you did, and ask you to advance ten thousand dollars for the street railway companies? A. He did not come to me. I met him in the lobby of the Fifth Avenue Hotel, and he said to me—he was telling the circumstances—he had been in to see Mr. Fox, and that they wanted a contribution. Well, I said, that is natural. I said, “They need money.” He said, “Yes.” He says, “I have not got it.” He says, “I have got to collect it.” I said, “Wait until I go in and see Mr. Fox.” I went in and saw Mr. Fox, and he said, “Yes, I need it, and I need it badly.” I said, “If I advance this money for Mr. Rogers, will there be any chance of my getting it back?” He said, “You will have to see Mr. Rogers on that.” He said, “I think there is no doubt about it.” So I went back and saw Mr. Rogers and I said to him, “When can I get this money?” He said, “Probably two weeks or a month, maybe two. I may not get all of it in two months.” So I told him I would advance it to Mr. Fox and he to pay me as quickly as possible.

Q. That is, as soon as he collected it from the street railways? A. It did not make much difference to me where he collected it or how he got it as long as he paid me back.

Q. You knew it was not a personal contribution from him?
A. I knew that.

Q. And that he was to get it from the members of the Association? I presumed he would.

Q. Did it occur to you then, or has it occurred to you since, why the street railways were going to contribute to Mr. Fox the \$10,000? A. No, I did not think anything of that at all.

Q. That did not occur to you? A. No, because they were asking contributions from all people; they asked contributions from me, and they asked contributions from a number of my friends.

Q. You know they were asking contributions from you and members of the party on account of your fealty and loyalty to the party, but the Street Railway Association of the State of New York belongs to no political party and, consequently, have no fealty or loyalty to a party, so why would these corporations be advancing money to the Republican State Committee? Did that occur to you? A. It did not occur to me. All that occurred to me was to help Mr. Fox out and assist him. At that time I was treasurer of the County Committee where I lived, and I was assisting all I could to help that election. If you remember, it was a very hard election.

Chairman MERRITT: I understand that the secretary of the Republican State Committee was William L. Fox, and the witness stated Ruben.

Judge BRUCE: No, Reuben L. Fox.

Q. The Mr. Fox you refer to was Reuben L. Fox — he is dead now, isn't he? A. Yes, sir.

Q. He died about two years ago, didn't he, killed in an automobile accident? A. I don't know.

Q. Now, Senator, did it occur to you at the time, that these street railway corporations, in consideration of the advancement of this large sum of money to the Republican State Committee, might probably make some demands from the Republican State Committee at the next session of the Legislature, in relation to legislation which they either wished to pass or to defeat? A. It didn't occur to me at all, because I don't know where the State Committee would come in on that at all.

Q. You don't know any way that the State Committee could have assisted the railroad companies? A. I don't see how they could.

Q. They were not without influence with the legislators, were they — the State Committee? A. I presume all the legislators were in the same position as I was. The State Committeeman from my district never asked me to vote in any way, shape or manner. He said, "Use your own judgment in regard to these things, and do just what you think is right and proper." I was State Committeeman from 1901 to 1904, including 1901, after Mr. Odell was elected Governor. All the time I was in the Legislature, Mr. Odell never asked me to vote for any particular bill or to use my influence in any way that was improper, and always told me to use my own judgment.

Q. Now, Senator, did you have any conversation with anyone else at the time with reference to the advancement of this \$10,000, other than Mr. Rogers and Mr. Fox? A. Not that I remember now. It is possible I might have mentioned it to other persons, but I don't remember now.

Q. If you did, to whom do you think you mentioned it, perhaps? A. If I had, I would know.

Q. You cannot recall having mentioned it to anyone else? A. No, sir.

Q. Now you went on and advanced the whole \$10,000, did you? A. I did before I got through.

Q. The first \$5,000 was the proceeds of these bonds that you negotiated? A. It might have been that. I recall the circumstances since you have been asking me. I was also executor of a large estate, quite a large estate, two estates, and it is possible that some of that money might have been in that way, but I think it was in the same amount.

Q. Well, Senator, you would not, of course, advance money to Mr. Rogers, out of funds in your hands belonging to you as executor of an estate — you don't mean that, do you? A. If the estate had some money to loan, I certainly would.

Q. That is, the money would be credited to you as executor, and by you advanced? A. Yes, sir.

Q. What is your best recollection as to whether that money

came from that source or from the proceeds of the bonds? A. I think it came from the bonds, but I am not positive.

Q. Now, let us pass to the next payment of \$4,000. Where did that money come from? A. That I cannot tell you. That, probably, was cash, or it might have been a draft.

Q. Do you remember whether it was drawn on your account, your personal account, in the Highland Falls National Bank? A. I cannot tell you that.

Q. Do you remember the date when it was paid, and the circumstances under which it was paid? A. No.

Q. To whom was it paid? A. To Mr. Fox. I was in there, and he said that there was another instalment due and I need the money; Mr. Rogers has not been here, and I would like to have some if you have it to spare.

Q. Did he say that Mr. Rogers had been in, in the meantime? A. No, he said he had not.

Q. Had not been in? A. No.

Q. Had you seen Mr. Rogers in the meantime? A. No.

Q. About what date was this, how long before election? A. Some time in October.

Q. Was it early in October or late in October? A. I don't remember.

Q. How long after that was it that you paid the remaining \$1,000. A. Some time before the election.

Q. Was that paid in cash or by draft? A. I don't remember.

Q. Was it paid to Mr. Fox? A. Yes, sir.

Q. When did you first speak to Mr. Rogers in regard to his repaying this money? A. In regard to his repaying it?

Q. Yes. A. I wrote him several times, and I saw him, I saw him down here at the Fifth Avenue Hotel. He told me that he expected it in every day, and when he got it, he would let me know.

Q. Was that before or after the election? A. Oh, long after the election.

Q. Did he say from whom he was gathering it in? A. No, sir.

Q. You, of course, have copies of your correspondence? A. No, not that correspondence.

Q. You don't keep any copies of your correspondence? A. No, sir.

Q. Don't you keep copies of your regular correspondence? A. Only in very important matters.

Q. Don't you consider a matter of \$10,000 rather important? A. I don't know whether I did or not at that time. Sometimes you loan money, and when you think you are not going to get it, you don't pay much attention to it.

Q. Did you mistrust at that time, that you might never get this money? No, but it was delayed so long that I got a little worried about it.

Q. Then you carried on a correspondence with him? A. I wrote him two or three letters.

Q. And you think you haven't any copies of those letters? A. I know I haven't.

Q. How long was it after you had written him, that you saw him? A. I don't know that, either.

Q. What did he say in reply to those letters? A. He said he was doing all he could, and I would hear from him shortly.

Q. When did you next hear from him? A. I did not hear from him, not until the following spring.

Q. Well you saw him frequently during the winter, didn't you, Senator? A. No, no. I very seldom saw Mr. Rogers in Albany.

Q. Now, let us see. In 1900, he was president of the Street Railway Association. He testified that he was there at meetings of the Railroads Committees almost every time the meetings were held, and Mr. Bedell testified to the same effect. You were a member of the Committee on Railroads in the Senate—you attended the meetings of the committee, did you not? A. Yes, sir.

Q. If Mr. Rogers was there and in attendance, you saw him, did you not? A. I certainly did if he was there. I only remember seeing Mr. Rogers once before the Senate Railroad Committee.

Q. Well, if Mr. Rogers did attend the meetings of the Railroad Committee that winter—they met weekly, did they not? A. Yes, sir, we did, after —

Q. After the session got under way? A. After February, we did.

Q. Well then, of course, you saw him if he attended the meetings of the committee. Didn't you at any time speak to him about

this matter of \$10,000 that had not been paid? A. I only saw him once or twice during that winter, I think.

Q. Then your impression was that you saw him only once or twice? A. He may have appeared in the Assembly, but I am speaking of the Senate.

Q. You think he only appeared before the Senate Railroad Committee once or twice? A. I only remember seeing him once.

Q. Where do you live in Albany? A. Stanwix Hall.

Q. Didn't you often see him there? A. I have seen him there several times, not frequently, no.

Q. Now he used to hang out around Stanwix Hall, didn't he? A. No, I think his headquarters were at the Ten Eyck.

Q. He was down at Stanwix Hall frequently, wasn't he? A. Not frequently, I saw him there several times.

Q. Now, at the times when you saw him there during the winter, didn't you speak to him about this \$10,000 that he had not gathered in, or had not paid to you? A. I spoke to him every time I saw him.

Q. What did he say? A. He said he would have it in a day or two.

Q. He kept putting you off from time to time, did he? A. Yes. At one time he said there was a Rochester Company, I think, that was hanging back, and some other company.

Q. Did he say the name of the company in Rochester? A. No, sir.

Q. Did he mention the name of the other company? A. No, sir.

Q. Did he tell you what companies had already contributed? A. No, sir.

Q. Or the amounts? A. No.

Q. Did you see Mr. Robinson during that winter? A. I don't remember seeing Mr. Robinson until, I think it was about 1904, or 1905.

Q. Now, do you remember when he finally paid you the money — or did he pay you? A. He put it to my credit with Ellingwood & Cunningham.

Q. Do you remember the circumstances under which it was put to your credit with Ellingwood & Cunningham? A. He notified me — he asked me whether to send a check or to place it

there, and I told him I was going to buy some more Transportation, and to put it to my credit there.

Q. Did he say afterwards, how much he had put to your credit?

A. Yes, sir, he wrote me, I think it was \$9,000.

Q. Did he tell you the date when he had put it to your credit?

A. It has passed from me — it appears here.

Q. It appears as April 23rd, 1900 — that is it, isn't it? A. Yes, sir, it appears that way here.

Q. He had kept you off from the previous September down to April 23rd? A. Yes, sir.

Q. And that is the date the Legislature adjourned that year, do you recall? A. No, I do not.

Q. I show you, Senator, the Senate Journal for the 124th session, 1901, volume 2, calling your attention to the entry on page 2049, "The hour of twelve o'clock having arrived, the President declared the Senate adjourned *sine die*," April 23rd, 1901. That is correct, isn't it? A. Yes, sir.

Q. Did it ever occur to you whether or not Mr. Rogers had any ulterior motive in putting you off in the payment of this money until the very last day the Legislature was in existence? A. No, it didn't occur to me at all.

Q. Now, going back to the \$500 credited in your account as margin, on October 12th of that same year; now, after we have gone over this transaction of the \$10,000 for that year, do you remember the circumstances under which that \$500 was credited to you? A. No, he owed me \$500.

Q. For what? A. Why, I can't tell you, I think it was borrowed money.

Q. Money that you had advanced to pay some obligation of his? A. No, I think I loaned it to him.

Q. Do you remember when you let him have it? A. I do not.

Q. Do you remember the circumstances under which he received it? A. No. He frequently asked me to lend him a hundred or two hundred or three hundred dollars, I never took any notice of it. I just put it down in a memorandum book, that is all. I didn't know what they wanted it for, or whom it was for.

Q. When you loaned him the \$300 on April 17th, you think you paid it to some other person? A. Yes, sir.

Q. Do you remember whether this October 12th money, you gave to him directly or to someone for him? A. I think to him.

Q. Do you remember whether it was paid in Albany or not? A. No, sir, it was not in Albany.

Q. Was it in New York? A. I think it was.

Q. Did he state what he wished the money for? A. I didn't ask him any questions at all. He said, "Have you got \$500 with you, I would like to have it if you have."

Q. Do you remember where you were at the time? A. In the Fifth Avenue Hotel, I think.

Q. Do you remember whether there was anyone else present or not? A. I don't remember.

Q. Was it in the corridor, or up in the room? A. It was down in the corridor. It was either there, or at the Hoffman House.

Q. If it was at the Hoffman House, was it down in the corridor or up in a room? A. It was downstairs. I just happened to see him as I came in, he was sitting there.

Q. Was it currency, or did you give him a check? A. It was currency.

Q. How long prior to October 12th was that? A. I cannot tell you, it might have been in the summer time, it probably was.

Q. Were you in the habit of carrying large amounts of currency around with you? A. Well, I am, yes.

Q. Were you in the habit of carrying amounts like \$300, \$500 or over, around with you? A. Yes, sir.

Q. Did he ever tell you that he had credited this to your account with Ellingwood & Cunningham? A. No, he did not.

Q. When did you first learn that it had been so credited? A. I can't tell you. He wrote me and asked what to do with it, and I told him I was going to buy some more stock, Transportation stock, and to put it to my credit there.

Q. You keep a file of the letters you receive, do you not? A. No, I do not.

Q. Not at all? A. No, I haven't any files at all.

Q. You destroy all the letters you receive? A. If they amount to anything, I put them in a pigeon hole for a while, and then destroy them.

Q. Do you think you have the letter you received from Mr.

Rogers? A. No, sir, after the Legislature adjourned I closed everything up.

Q. Now, proceeding with the account, this is October 12th, 1900, you find that you had no further transactions whatever — I understood you to say, Senator, at the time this \$500 was deposited by Rogers to your credit, you intended to buy other Transportation, and wished that to be deposited for the purpose of margining the purchase — is that correct? A. The \$500, yes, sir.

Q. On October 12th, that \$500? A. If that is the \$500, and I think it is. I don't remember any other \$500 transaction.

Q. Now, at the time that was deposited, he had already deposited, as you have testified, \$300 for you, and this \$500, making in all, \$800? A. Yes, sir.

Q. And they had purchased 100 Transportation at 11? A. Yes, sir.

Q. Leaving you indebted to them \$340, is that correct? A. Why, according to this statement it is, yes, sir.

Q. Well, the \$500 and the \$300 would be \$800, and taking the \$800 from the \$1,112.50, with the interest — that would be correct, wouldn't it? A. Yes, sir.

Q. You owed them at that time \$340? A. Yes, sir.

Q. And they also held 100 Transportation? A. Yes, sir.

Q. Then you had it margined down to about 66 $\frac{2}{3}$ per cent, had you not? A. I think so.

Q. Now, I call your attention to a letter dated September 21st, 1900 "Senator Louis F. Goodsell Highland Falls New York. Dear Sir." It appears in the copying letter-book of Ellingwood & Cunningham. "Referring to our letter of September 5th" — do you recall having received a letter from them on September 5th? A. I don't recall it, no, sir.

Q. "Writer was called away and had not seen same and discovers that the letter was not transcribed correctly. We are writing now, however, to ask you to send us \$500 by return mail, as the condition of the market makes this necessary." Do you recall receiving that letter? A. I do recall something about their asking for margins. What date was that?

Q. That was September 21st, 1900. A. They probably did.

I don't remember the circumstances, but I think probably that is right.

Q. Do you recall on October 1st, 1900, receiving the following letter, a copy of which letter appears at page 380 in the copying letter-book of Ellingwood & Cunningham of that date: "Hon. Louis F. Goodsell, Highland Falls. Dear Sir: Referring to our letter to you of the 21st, which I have just read, Mr. Rogers informs us that the margin deposited, \$500, was the limit to his understanding, and that beyond that point you would take care of the same. If you do not care to margin same further, shall we sell it at the market? Kindly advise us by return mail. Ellingwood & Cunningham"? A. I don't remember that.

Q. That refers, does it not, to the margin on the 100 shares of Transportation, the only stock you had at that time? A. That is all, I guess.

Q. From this, do you remember that Mr. Rogers had agreed to margin that stock and carry it up to the extent of \$500, and after that you would take care of it? It would so appear from this. Why was he margining your Transportation? A. He owed me that \$500.

Q. I know, but this does not refer to any agreement in reference to his paying \$500 which he owed to you? The letter says, "Mr. Rogers informs us that the margin deposited, \$500, was the limit to his understanding, and that beyond that point, you would take care of the same." A. I guess probably I said to Mr. Cunningham, I don't remember saying it to Mr. Rogers, that I didn't care to advance any more money on the Transportation. I guess that probably is correct.

Q. Had Rogers agreed to margin your Transportation up to the extent of \$500? A. He hadn't agreed to margin anything. He owed me \$500, and I asked him to place it to my credit.

Q. Then, Mr. Cunningham, who dictated that letter—it says J. W. C.—was mistaken, or Mr. Rogers was mistaken in his statement to Cunningham, that he had only agreed to margin it up to \$500? A. That was what he owed me.

Q. After you received that letter, what did you do? A. I guess I didn't do anything, except I wrote him, probably, to sell it, I don't know what else. I don't remember answering the letter; I don't remember receiving the letter, but I presume I did.

Q. Did you give him orders? A. I don't remember answering the letter. I don't remember receiving a letter, but I presume I did.

Q. Did you notice the discrepancy between the statement made by Mr. Rogers to Mr. Cunningham, and your understanding with Rogers? A. Why, I had no understanding with Rogers, except he was going to put \$500 to my credit with Ellingwood & Cunningham as margin on this Transportation.

Q. You notice in this letter Cunningham states that Rogers told him he would margin your Transportation up to 500, and after that you would have to take care of it? A. I don't know anything about that. That was between Mr. Cunningham and Mr. Rogers.

Q. Now, you notice, Senator, that from October 12th down to April 23rd — that is, October 12th, 1900, to April 23rd, 1901, there are no transactions whatsoever, are there. You were simply carrying 100 Transportation which you had bought on April 6th. I say, you know that to be the fact, don't you? A. I notice it on here, yes.

Q. Then you had not made any further purchases of Transportation, had you, at that time? A. I changed my mind about it.

Q. Changed your mind. Do you remember what led you to change your mind? A. You mean, between 1900 and October 12th.

Q. Yes. You said you had Rogers pay this \$500 into Ellingwood & Cunningham, because you expected to buy more Transportation? A. Well, I expected to buy some Transportation in 1901 — not on that transaction, that is, in 1900.

Q. Were not you making a deposit somewhat in advance? Oh, you mean when you deposited the nine thousand? A. When I deposited the nine thousand I expected to buy more Transportation, and in the meantime something came up and I did not.

Q. On April 23rd. A. I left the money.

Q. You are credited with nine thousand cash? A. April 30th.

Q. April 23rd, nine thousand cash? A. Nine thousand to the ten?

Q. That was paid to your credit by Rogers, was it? A. Yes, sir.

Q. Did he tell you before he put it in there that he was going to

put it in? A. He had it, and asked me what disposition to make of it.

Q. Have you that letter? A. No.

Q. And what did you tell him to do with it? A. I told him to put it to my credit; that I expected to buy more Transportation.

Q. Did he say why he had not got the whole ten thousand? A. No, he did not. Possibly he may have paid me a thousand of that before or afterwards — I don't just remember.

Q. Don't you recall whether or not he paid you that extra thousand? A. He paid me the ten thousand. Whether he paid me the thousand before he paid the nine thousand — I don't know whether he paid it before or after.

Q. Do you remember where you were when he paid it? A. What?

Q. The extra thousand? A. No, I do not.

Q. Do you remember whether it was in Albany or New York? A. No, I do not.

Q. Was it in cash or in a draft? A. I could not tell you that.

Q. You have no recollection whatever in regard to it? A. No, sir.

By Assemblyman FOLEY:

Q. Senator, you don't remember the passage of the Charter of 1901 of the city of New York, do you? A. Charter?

Q. Yes, A. Yes, sir, I do remember of it.

Q. Well, there was an amendment to section 1461 of that Charter which confirmed the grant of 1900 to the Fifth Avenue Stage Company and continued their exclusive franchise. That was passed on April 22nd, 1901, the day previous to this payment. You did not get any information about the increase in the stock by that time? A. No. We all thought that Transportation was going up. My friends bought it.

By Judge BRUCE:

Q. Do you recall this measure pending in the Legislature to which Mr. Foley has called your attention as having been pending in the Legislature, and as having passed on the 22nd, the day before adjournment? A. I remember the charter, but I don't remember any particular part that was in that charter.

Q. Do you remember the dissertation on the charter, or that portion of it in the Senate prior to its passage? A. No, I don't remember it. I would not now know whether that was necessary to put in the charter or not. I thought it was a bill, and became a law.

Q. It appears from the books of Ellingwood & Cunningham, Senator, that that \$9,000 came from Henry A. Robinson, the general solicitor of the Metropolitan. Did Mr. Rogers ever say anything to you about it? A. No.

Q. Did you know that it came from him? A. No, I did not. I did not. I did know that Mr. Robinson was the secretary and treasurer of the Street railway Association, but I did not know there was a check.

Q. When did you first learn that this money came from Mr. Robinson? A. From Mr. Robinson?

Q. Yes. A. Why, I did not learn it at all.

Q. Never have learned that? A. Why no, prior to what you say now.

Q. But it so appears. It appears from the evidence that the check for \$9,000 on that date went through the bank, and through Ellingwood & Cunningham to the Morton Trust Company for that amount? A. Well, that is probably the Street Railway people, but I knew nothing about that transaction.

Q. You knew then at the time that the money came from, or presumed that it came from the Street Railway Association? A. No, I did not.

Q. Well, you knew that Rogers was going to collect it in, from the Street Railway Association? A. Yes, he told me that he expected to collect it from the Street Railway Association.

Q. Now, referring again to your account a week afterwards or two weeks, rather, you will note, after the nine thousand was deposited, you did not buy any Transportation, but you drew a thousand, you noticed that on May 7th? A. May 7th, 1,000.

Q. Do you recall the circumstances under which that was withdrawn? A. No, I do not.

Q. Do you recall the purpose for which it was drawn? A. No.

Q. Well, it was drawn on the Colonial Trust Company by a draft, No. A-5489. Does that refresh your recollection? A. No.

Q. Do you recall what was done with the money? A. Did I draw on the Colonial Trust Company?

Q. Yes, you drew a draft on the Colonial Trust Company, which was paid by Ellingwood & Cunningham by the check which I show you, No. A-5489, dated May 7th, 1901. You drew the draft and Ellingwood & Cunningham paid the draft with the check? A. Oh, I don't know.

Q. You do remember what was done with the money? A. No, I do not.

Q. Do you recall that on the same day you received 1,500 shares of Transportation from Ellingwood & Cunningham? A. On September —

Q. Yes, same date that you drew the thousand, two weeks after the nine thousand was deposited? A. I drew 1,400 shares from him and 100 for my own, yes.

Q. I show you the Exhibit numbered 14. That is the receipt which you gave for the 1,500 shares, is it not? A. I saw that in a newspaper, yes, sir.

Q. That is the receipt? A. Yes, sir.

Q. Senator, did you on May 7th draw these 1,400 shares and 100 of your own of Transportation? A. I could not tell you what date it was.

Q. Was it on the date on which you gave the receipt? A. I presume it was.

Q. Did you draw this stock down there at Ellingwood & Cunningham's office? A. I believe I did, yes.

Q. Now just give me all the facts in regard to that withdrawal? A. I think it was in May or the latter part of April that I was in the Fifth Avenue Hotel, and Mr. Graham, George Edwin Graham —

Q. Who was he? A. He was a newspaper correspondent. I was acquainted with him at Albany.

Q. Who is Mr. Graham? He used to represent the Associated Press. He is dead, is he not? A. Well, I don't know that.

Q. He is dead? A. I was just asking about him now, and I learned that he was dead. He came to me and asked me if I had Transportation. I told him yes, that I had 100 shares. And I asked him if he wanted to buy it? He says, yes, I do, and I want

to buy some more; I want to buy considerable of it. I says I have only got 100 shares. I says, there are other parties up my way that have some, and I will find out if they will sell it. And then it occurred to me that Ellingwood & Cunningham might have some. I went over to Ellingwood & Cunningham, and Mr. Cunningham said that he had quite some shares, but it did not belong to him, and he would let me know inside of a week. I did not ask him who they were. I did not know. And I went back and told Mr. Graham. Well, he said, after you know from your friends up the country, whether they will sell theirs or not, he says, I will tell you, I don't want this all myself. I want it for some parties. And he says, I won't tell you who they are. Well, I says, I don't want to know, if you want to keep it quiet. So I went up and found from Mr. Taggart of Newburg that he had 500 shares.

Q. That was the county clerk? A. Yes, that was the county clerk. And Mr. Tompkins, in Middletown, had a few hundred shares, and a young man, a stenographer there, had 50 shares. Mr. Tompkins would not sell his. I asked Mr. Cunningham what I could buy those for, and he said he would let me know when I returned, in about a week. I told Mr. Tompkins that I did not suppose that I could get over twelve, or, make it thirteen for him. He said he would not sell it for less than twenty. I asked Mr. Taggart, and Mr. Taggart said he would sell his at thirteen, but would like to get more for it if he could. And I came back and asked Mr. Cunningham — I says, I have heard from all these parties, and I will show you who they are. He made out a list of that and the amounts.

Q. See if this list is correct. Do you recall the list that was given to you? A. Well, I don't remember just now who they were. Now, Mr. Taggart's was 500 shares, Mr. Nixon's was 500 shares, and Mr. Bedell's was 500 shares, but the 500 shares of Mr. Taggart does not appear with Mr. Cunningham, because I gave him a separate check for that of Mr. Taggart's. And then there was Mr. Baxter, I think, was 100 or 200 shares, and Mr. James T. Rogers, 100 shares, and Allds, Jotham P. Allds, 100 shares. Those men I have not seen — had not talked with anybody. And Mr. Cunningham said that fourteen would be a

fair rate. I says, I don't know whether I can get it or not; it is a little bit above the market price. Well, he said, they agreed on that.

Q. Do you recall what the market price was at that time? A. No, I do not. I think it was in the neighborhood of ten though, somewheres — nine or ten.

Q. Wasn't it under seven? A. I don't know. I know it was down. So I went over and saw Mr. Graham and I told him — I says, why don't you buy this in the open market? Why, he said, if I should do that, with the amount that I want for these people, why, he said, it would send the price up. Well, I says, it is not for me to say what you can get for it; fourteen is what they want for the shares; now, I will sell mine for fourteen, or you can sell for less than fourteen. Well, he says, I don't know why you should take less than they do. I says, what do you think about it? He says, I will let you know. He was gone a while and came back with an agreement drawn up that he was to purchase those 2,000 shares at any time before the 1st day of November at the price of fourteen, and the article was signed, and drawn up in typewriting. And I took it that it was all right. I says, I will do that. And about sometime in October he wrote me to come down and bring the stock, at the Fifth Avenue Hotel. And I went down there and brought the stock and he handed me the draft — New York draft. I deposited it in the Highland National Bank.

Q. How long had you had the stock? A. How long had I had it?

Q. Yes. A. I got it from Mr. Cunningham, I think, in May.

Q. Did you also get Mr. Taggart's at that time? A. Yes.

Q. And had you held stock all this time? A. Yes, sir.

Q. Now he brought back an agreement. Where did this conversation take place that you had with Mr. Graham? A. At the Fifth Avenue Hotel.

Q. And where did he go? A. I don't know.

Q. Whom did he represent? A. I could not tell you.

Q. Did you inquire? A. No, sir.

Q. Did he say? A. No, sir. He said this, that all the parties were not in town, and they probably would not be in until fall, and he says, you might have to wait until then.

Q. What other name was signed to the agreement? A. I don't recollect.

Q. Where is that agreement now? A. After the transaction I tore it up.

Q. How long after? A. Why, I guess soon.

Q. Was it executed in duplicate, did he take a copy and you a copy? A. Yes.

Q. Did he sign it? A. He signed it.

Q. And you signed it? A. Yes, sir.

Q. Did it appear on the face of the agreement or next to his signature for whom he was acting? A. No, sir. I didn't place a whole lot of confidence in it.

Q. How long was he gone? A. Oh, perhaps two or three hours.

Q. Did you know where he went? A. No, sir.

Q. Did he say where he had been? A. No, sir.

Q. The agreement, was it typewritten? A. Typewritten.

Q. How many pages did it cover? A. Half a page.

Q. Were you present when it was drawn up? A. No, sir.

Q. You waited there for his return? A. Yes, sir.

Q. The whole two or three hours? A. Yes, sir.

Q. How did Graham happen to come to you? A. Why I met him in the Fifth Avenue Hotel. He knew I had the stock.

Q. How did he know? A. Why, I had talked with him several times about it.

Q. To whom had you talked? A. To Graham.

Q. About this stock? A. Yes, sir.

Q. What was the occasion that led to your discussing your holdings of Transportation with the newspaper man? A. Why, he wanted to purchase, for a purpose that he had in view. What that purpose was I didn't know.

Q. Did he state? A. No, he did not state.

Q. How long before this transaction took place had he learned from you that you had this stock? A. Why, that was known shortly after I purchased it. He and I were quite intimate, and he told me of stocks that he bought and sold.

Q. Did he state to you that he thought that the purchase of 2,000 shares in the open market would advance the stock beyond

fourteen? A. Not the 2,000 shares, but the amount that he required. He said he had already 5,000 shares — this party had that he represented, and he was looking for more. I asked him how much more he wanted. He did not know exactly.

Q. Well, now, did you know whether or not these shares were ever transferred on the books of the company? A. No, sir, I do not. I had them in my possession for nearly four months, I think, but I could not tell you a thing about them. I don't know that I ever read them over.

Q. When did you next talk to Graham about the matter after you delivered him the stock? A. Oh, I saw him off and on.

Q. Did you discuss this matter with him at all? A. Not afterwards.

Q. Did he ever say how he came out on the transaction? A. No.

Q. Now, you received this Transportation from Mr. Cunningham in May. When did you first make him a payment on account of it? A. Sometime in October.

Q. How much did you pay him? A. \$19,600.

Q. That was the first payment, was it? A. The only payment.

Q. First and only payment? A. Yes, sir.

Q. Did you state to Mr. Cunningham with whom you were dealing? A. I don't know whether I did or not.

Q. Didn't you tell him that you were dealing with a man who wanted to gather in a number of thousand shares of stock? A. I may have told him that. I don't remember it.

Q. And don't you think you told him you was dealing with a man who was acting for — A. I probably did, because I told him I would not be able to make that payment until sometime near four months, or up near the first of November.

Q. Prior to the time that you went down to Mr. Cunningham's didn't you know that Mr. Nixon held a block of 500 shares of this stock? A. No, sir.

Q. Hadn't you ever talked with Mr. Nixon about the stock? A. No, sir.

Q. Didn't you know that he held any shares at all? A. No.

Q. Didn't you know that Mr. Bedell held 500 shares? A. I think I did — not 500 shares. I knew he held some.

Q. When did you learn that? A. Oh, I don't know. Some time in the spring.

Q. Under what circumstances did you learn that he held 500 shares? A. I could not tell you. Sometimes when we would meet we would talk about investment and so on. It may have occurred that way — I don't know.

Q. Did he tell you at any time that he had got a tip to buy that stock and had bought a block of it? A. No, sir.

Q. Did he state to you at any time anything about the prospect of an advance in that stock? A. No, sir. Mr. Bedell and I were never very intimate.

Q. Did you ever talk with him in regard to the effect of the bill which you had passed in 1900? A. No, sir.

Q. On this stock? A. No, sir.

Q. Did you ever state to him that you thought that bill, if it was passed, would result in a rapid advance in the stock? A. No, I did not, but I thought it would.

Q. Do you recall having received on or about June 4th, 1901, the following letter from J. W. Cunningham:

"HON. LOUIS S. GOODSSELL,
Highland Falls, N. Y.:

MY DEAR SENATOR:—

Referring to the 1,500 Transportation which we delivered to you the other day, please let us know by return mail when we may expect to hear from you in regard to same.

The general stock market looks very strong and I believe we are going to have very much higher prices.

Yours truly,

J. W. CUNNINGHAM."

Now, you testified a while ago that you stated that they would probably have to wait until fall for their money? A. Yes, sir.

Q. Do you recall having received this letter of June 4th, less than a month after the stock was delivered to you? A. I don't recall it, but I presume that is correct.

Q. September 12th, 1901, do you recall having received the following letter:

"HON. LOUIS S. GOODSSELL,
Highland Falls, N. Y.:

DEAR SIR:—

Very sorry to write you again on the subject of the 1,500 Transportation stock which was delivered to you, but as so much time has elapsed and the debit balance still remains the same we must ask you to try to arrange with your friends to pay up the balance due. It certainly is not fair to you to have this hanging fire in this way, and after about six months of waiting we think you are entitled to demand that they make settlement at once.

Very truly yours,

ELLINGWOOD & CUNNINGHAM."

To whose friends do they refer to there? A. The man I sold the stock to.

Q. Who were your friends who understood this stock was to come to — A. Graham was the only man I had dealings with.

Q. Well, he seems to have understood that there were certain friends that were taking this stock? A. Governor, I cannot tell what he thinks.

Q. Did you tell, when you went down to see him and wanted to gather this stock, that you were gathering it in for some friends of your own? A. I told him this stock was sold to parties that I knew nothing about, and I might get it to-morrow and I might not get it until November.

Q. But you were acting only as agent, and the man you were dealing with was acting as agent? A. I was acting as agent, but still I was a party to it, because I had 100 shares in it.

Q. But otherwise you was acting as agent? A. Yes.

Q. Why does he say "To arrange with your friends to pay up the balance due. It certainly is not fair"—to have to keep you waiting this way? A. The only way to find that out is for you to ask Mr. Cunningham, because I don't remember anything about it.

Q. Can you throw any light on how he got the impression that you were gathering in this stock for your friends? A. No. A broker don't usually ask those questions, I found out, in dealing with them, and the more you ask them, they don't tell you.

Q. Now, on October 7th, did you, on or about that time, 1901, receive this letter:

"HON. LOUIS S. GOODSSELL,
Highland Falls, N. Y.:

DEAR SIR:—

Yours of the 7th inst. received and much obliged for same. Hope they will not hang you up any longer than ten days more."

Q. Who was they? "Hope they will not hang you up any longer than ten days more?" A. I don't know.

Q. What was this letter of October 7th? A. I don't remember anything about it. I don't remember receiving any letters from Mr. Cunningham, but I presume the parties that owned the stock were pressing him for payment.

Q. I know, but he refers to your letter of the 7th. What did you write him on the 7th of October, 1901? A. We would hear from it from the party between that date and the 1st of November. That is what the agreement shows, if we did not hear from him the 1st of November.

Q. Did you show Mr. Cunningham the copy you held? A. I told him I had the agreement.

Q. Did you show it to him? A. I don't know that I did.

Q. Did you tell him about your relations with Mr. Graham? A. I don't know, but I presume I did.

Q. Now, if he understood that you were dealing through Mr. Graham, why does he continually in this correspondence refer to your friends that are hanging you up? A. I don't know.

Q. Could he have gotten the impression from anything that was said, that some friends were taking this stock off the hands of yourself, and Nixon and Bedell and Rogers and Allds and Baxter, at a price very much in advance of the market price? A. I don't know what he thought about it.

Q. I am asking you if he could have gotten the impression from anything that you said or did, that that was the fact? A. I don't think so; no, I know he couldn't, because I didn't know myself.

Q. Now, Senator, didn't you have the impression that some

good friends, acting through Mr. Graham, were taking the stock from you and Mr. Nixon and Mr. Bedell and Mr. Rogers and Mr. Allds and Mr. Baxter, at an advance very much over the market price? A. No, I did not, for the reason that I thought this bill was of more consequence than we thought of, and some one was trying to get the majority of the stock, or to control it. I knew nothing of the inside workings of the stock, nor of the bill.

Q. How did they or Mr. Graham know that so many men connected with the Legislature, which had passed the bill, had the stock? A. I don't think he knew anything about it until he saw the stock. I know he didn't. I didn't, until I saw the list from Mr. Cunningham.

Q. These friends were not philanthropists, they were buying in the cheapest market, weren't they? A. I don't know, people sometimes buy stock and they don't want anyone else to know.

Q. That is true, but in order to have that secrecy, they are not paying a great advance over what it is selling for in the open market, are they? A. I can't tell you what their object was, in fact, I didn't care what their object was. I am not supposed to know what people want things for, if I have it to sell, I sell it, and if I want to buy it, I buy it.

Q. Now, referring again to this letter of October 21st, the letter says: "Yours of the 7th instant received, and very much obliged for the same." Did a check accompany that? A. The 21st of what?

Q. The 7th of October, 1901? A. The 21st?

Q. No, the 7th. You paid the \$19,000 on the 21st, two weeks later. "Yours of the 7th instant received, and much obliged for the same. Hope they will not hang you up any longer than ten days more." A. I don't know anything about the time I didn't know when they were going to buy it. The agreement said some time between now and November 1st.

Q. Well, referring to this letter of October 21st, 1901 "Hon. Louis F. Goodsell, Highland Falls, New York. Dear Sir: Yours of the 21st received, enclosing draft for \$19,600 in payment of 1,400 shares of New York Transportation at 14 We received this money as follows: Hon. S. F. Nixon, 50

shares, \$7,000; Louis Bedell, 500 shares, \$7,000; J. T. Rogers, 100 shares, \$1,400; J. P. Allds, 100 shares, \$1,400; A. E. Baxter, 200 shares, \$2,800. Please accept our thanks for this money. We regret very much to hear that"—but that refers to a personal matter. Signed "Yours truly, Ellingwood & Cunningham." Do you recall receiving that letter? A. Yes, sir.

Q. Now, when and where did you deliver the stock, the 2,000 shares? A. At the Fifth Avenue Hotel.

Q. To whom? A. To Mr. Graham.

Q. On what date? A. I don't remember just the date.

Q. Would it refresh your recollection if I told you that you made the payment to Ellingwood & Cunningham on October 21st? How long before that was it? A. Several days, I think.

Q. Was it in the morning or in the afternoon? A. I can't tell you that.

Q. You brought the stock down with you, did you? A. Yes, I probably came down on the morning train and gave it to him when I arrived.

Q. Where did it take place, in the corridor, or up in a room? A. Right in the rotunda.

Q. How did he pay you? A. He gave me a draft, I think, on some New York bank.

Q. Do you recall the bank? A. No, I do not.

Q. Don't you recall what bank it was drawn on? A. No, I do not—I have tried to do it.

Q. And where did you deposit the draft? A. In the Highland National.

Q. Will the records of the Highland National Bank show on what bank or other institution the draft was drawn? A. I presume so, I don't know.

Q. Will you look at the records of the Highland National, and send us a memorandum of what bank it was drawn on? A. Yes, sir, if they have it, I will.

Q. Now, who drew the draft? A. I can't tell you that, I don't know, I don't remember it.

Q. Well, now, Senator, weren't you curious to know who was putting up the \$19,600? A. How was that?

Q. Weren't you curious to know who was putting up the \$19,600? A. No, I wasn't, not a bit.

Q. When you received a draft of that amount — it is quite a considerable sum, is it not? A. It is.

Q. Didn't you notice who drew the draft? A. I think it was a New York draft, drawn by some cashier, I think.

Q. Can you remember what bank or trust company? A. No.

Q. To whose order was the draft drawn? A. I think to my order.

Q. Was it dated on that date? A. I can't tell you the date of the draft, it was some time between the 15th and the 21st of October, because according to the receipt I gave them, check on the Highland Bank for \$19,600; Ellingwood & Cunningham. I gave Mr. Taggart a check for \$7,000, and the remaining \$1,400 was my own.

Q. Let me see. That would make more than \$19,600, wouldn't it.

By Mr. KRESEL:

Q. The draft was for more than \$19,600, wasn't it? A. The draft was \$28,000, I think.

By Judge BRUCE:

Q. And that you took up and deposited in the Highland Falls Bank, did you? A. The Highland National Bank.

Q. Did you? A. Yes, sir, at Newburgh.

Q. Now, all this summer, when you had been holding this 2,000 shares of Transportation, which you had an option or agreement to sell at 14, didn't it occur to you, time and again, to wonder who it was that was gathering up this stock? A. I may have had some opinion about it, but I don't remember just now what it was.

Q. What was it, do you think? A. I don't know.

Q. In your best recollection, who did you think was gathering it up? A. I hadn't the slightest idea. I didn't ask Mr. Graham, even. In the commencement of the conversation he said, "I won't tell you anything about the transaction, and you need not ask me," and I didn't. He said it was a legitimate transaction, and I said, yes.

Q. What is the nearest you can fix the date of the agreement with Mr. Graham? A. I cannot fix it.

Q. Well, taking this receipt of May 7th that I showed you, as refreshing your recollection, was it before or after that? A. It must have been before.

Q. How long do you think before? A. It may have been a day or two or three days, I don't know.

Q. About that time? A. Somewheres near that time.

Q. Now, don't you know, as a matter of fact, Senator, that during the month of May, 1901, this stock was bid for, and the asking price was $4\frac{1}{2}$ in the open market? A. No — I didn't consider it worth a whole lot.

Q. Didn't you know, as a matter of fact, that there was absolutely no market for it, that it was offered at 4, and no transactions? A. No. When Mr. Graham spoke to me about it, I thought perhaps there was something that I didn't know anything about, that would send that stock up. It was rumored that they were starting an express line, and expected to do wonders with it, that would be a great accommodation to people up in the Bronx, and I understood that they had absorbed the carriage company and the electric vehicle company, and the storage battery company.

Q. Now, Senator, you usually keep track of the market value of your securities, don't you? A. I do.

Q. Now, when you were holding this Transportation, did you notice that in January, 1901, that $6\frac{1}{4}$ was bid, and it was offered at 7 — do you recall that? A. No.

Q. Do you recall that in February, $4\frac{1}{2}$ was bid, and it was offered at 5? A. No, I know it was very low.

Q. Do you recall that in March, 4 was bid, and it was offered at $4\frac{7}{8}$? A. No.

Q. Do you recall that? A. No, but I suppose probably I thought that was a good sale.

Q. Do you recall noting that in April $3\frac{3}{4}$ were bid and it was offered at 4? Do you recall that? A. No, I don't.

Q. Do you recall that in May, 4 was bid and it was offered at $4\frac{1}{2}$? A. No, sir.

Q. Do you recall, Senator, that in June, the next month after you got this option of Graham at 14 for 2,000, that one was bid and it was offered at $1\frac{1}{4}$? A. That does not signify anything.

Q. I say, do you recall that? A. No, I don't.

Q. Just search your memory a moment. Don't you think that the fact that you had made such an excellent option of 14 for two thousand, when the stock was offered at 4 and in the month afterward it went down to 1, that that had impressed upon you what an excellent bargain you made? A. I thought I had, but you don't know what minute that stock might go down, nor no one else. I had some stock that was down to 18 or 20 and went up in two or three days to 35 or 40. You can't tell.

Q. Well, Senator, do you know many transactions where people are gathering in 2,000 shares of stock offered at $4\frac{1}{2}$ and that are buying at 14? A. Yes, many of such circumstances.

Q. That would be an advance of over 300 per cent of the market? A. (No answer.)

Judge BRUCE: I will continue the examination after recess.

Chairman MERRITT: The Committee will stand adjourned until 2 o'clock.

Senator WAGNER: You want to hold the witness?

Chairman MERRITT: Yes.

Judge BRUCE: You will return, Senator, at 2 o'clock.

The WITNESS: Yes, at 2 o'clock.

Adjourned until 2 o'clock.

AFTER RECESS.

2 P. M

LOUIS F. GOODSELL, resumed the stand.

Examination resumed by Judge BRUCE:

Q. The last item, Senator, before recess, concerning which examined you, was the draft for a thousand dollars made by you on May 7, 1901. On May 8, I notice on your account that you purchased 100 Steel at $52\frac{1}{8}$, amounting to \$5,225; 100 Steel Preferred at $99\frac{3}{4}$, amounting to \$9,987.50; and 100 shares of Southern Pacific at $56\frac{3}{4}$, amounting to \$5,687.50. Those were the only transactions I note in your account during the month of May.

Q. Now, proceeding with the account. You were not carrying any other stocks at this time, were you? You had disposed of the 100 Transportation; am I correct? A. What is that?

Q. You were carrying no other stocks at this time excepting those that I have mentioned, and you had disposed of the 100 Transportation? A. I had taken up the 100 Transportation.

Chairman MERRITT: Speak a little louder, Senator.

The WITNESS: Yes, sir.

Q. Now, on June 5, 1901, you sold 100 shares of Southern Pacific at 60, amounting to \$59,985.50, having purchased it at 56¾, amounting to \$56,750? A. June 5?

Q. June 5, 1901. A. Yes, sir.

Q. Have you the page, Senator? A. Yes, I have it.

Q. Now, on June 3, 1901, is the next item. You drew \$3,000. Do you recall in what manner that was withdrawn? A. No, but before I answer that I want to make a little statement in regard to this.

The Transportation stock, the 100 shares, was included in the 2,000 shares that I gave him — made an agreement with Mr. Graham on. Of course, he was bound by that agreement to pay that, no matter how low the stock got. He was bound on that agreement to pay the 14 and I was bound to accept the 14. If it went up to 100 I could not get any more. It was a fair transaction. I see that the hundred shares were carried on here until the time I sold it. It was late in the fall.

Q. You mean in that time you actually delivered it? A. Well — yes, sir.

Q. Is that right, Senator? A. That is all I can remember on that transaction.

Q. Now you note that on June 3, 1901, you drew out in cash \$3,000. Do you remember how that was withdrawn? A. June 3?

Q. Yes. A. No, I don't.

Q. Do you remember what purpose it was withdrawn for? A. I do not.

Q. How did you usually withdraw money from Ellingwood & Cunningham? By check, draft or in cash? A. Why, I think both ways.

Q. This check was drawn on the Fourth National Bank. Does

that refresh your memory? A. I did not draw any check on the Fourth National Bank.

Q. It was drawn to the Fourth National Bank? A. I don't know anything about that.

Q. You haven't any recollection whatever in regard to the purpose for which that withdrawal was made? A. No, I probably drew that through the Highland Bank.

Q. Can't you recall what you did with it? A. No, I do not.

Q. Did it go into your account at the Highland Bank? A. I don't know that either.

Q. Do you recall whether you delivered it to anyone else, or any part of it? A. I haven't any recollection of it at all. Is that June 3rd?

Q. Yes. A. Yes, it closed right after me. It looks like January in this account.

Q. That was about a month after you had given this option. You recall using the \$3,000 at that time? A. I know I used a whole lot of money during that time. I couldn't tell you.

Q. If it was a regular transaction in due course of business it would appear in your Highland Bank account? A. Yes.

Q. The next transaction takes place October 21, 1901, when there was delivered to you, if you will note, the hundred Transportation. Is that correct? A. I think that was the date I gave him the check for \$19,600.

Q. October 21, 1901? A. I think that was the date.

Q. That was a part of the two thousand shares, was it? A. That was a part of the two thousand shares.

Q. Now, during the year 1901, were you engaged in any business, Senator, other than a representative of your district in the Senate? A. Yes.

Q. What business was that? A. That was the real estate business.

Q. Did you keep any books? A. I did.

Q. Have you those books? A. Not of those years. I have only the books up to within about three years.

Q. What became of your books prior to three years ago? A. They were destroyed with all the other papers.

Q. By you? A. By me, yes. There may be some books lying around or some papers. I do not know. I do not think so.

Q. When did your service in the Legislature conclude? A. 1906.

Q. 1906? A. Yes.

Q. Have you any books of account prior to 1906 now in existence? A. I don't know. You say "Any books." I may have some books.

Q. Do you know of any — do you recall any? A. No, not at the present time I do not.

Q. If you have any will you produce them? A. I will, sir.

Q. Referring again to your account. The next transaction you will note is on November 31st. I wish to call your attention to this, your account of November 31st. You were then carrying 100 shares of Steel and 100 shares of Steel Preferred against which you owed Ellingwood & Cunningham, as appears on your account there, \$10,160? A. You say November?

Q. On November 31st. A. There is no 31st day in November.

Q. I mean the 30th, rather. Thank you for the correction. Ten thousand one hundred and sixty dollars and three cents. A. Yes.

Q. And they were carrying 100 Steel Common and 100 Preferred? A. Yes.

Q. Now, on December 10, you drew out \$3,000, notwithstanding you were then owing them \$10,160. Do you recall the circumstances of that withdrawal? A. No, sir, I do not.

Q. Was it in cash or by draft? A. I could not tell you.

Q. Do you know the purpose of that withdrawal? A. Evidently it was cash, because it says cash here.

Q. Yes, but the bookkeeper says that might also indicate a draft. Do you recall the circumstances? You withdrew three thousand dollars and you owed them \$10,160.03? A. No, I do not. There was nothing uncommon about that.

Q. Did that go into your bank account? A. I don't know.

Q. On the 12th, two days later, you sold your Steel, both common and preferred, did you not? A. It says so here; I presume that is correct.

Q. Then they have carried no stock for you whatsoever A. That is what it says here, in 1902 and 1903.

Judge BRUCE: Would you kindly turn this way, Senator, the stenographer has difficulty in hearing?

The WITNESS: Yes, sir.

Q. After this sale they owed you \$64.78? A. That is what it says here.

Q. You will note that by the amount that you withdrew March 3, 1902, do you not? A. Yes.

Q. Balancing the account; is that correct? A. That is correct here.

Q. After that transaction you owed them nothing, they owed you nothing, and they carried no stocks; is that correct? A. That is correct for 1902 and 1903, I think.

Q. Referring again to your account, you note, do you not, that between March 3, 1902, and July 7, 1904, you had no stock transactions whatever with the firm of Ellingwood & Cunningham? A. No, but according to the book here I expected to have.

Q. And for two years and three months no transactions: is that correct? A. No transactions; that is right.

Q. Now, will you note that the next entry on your account after March 3, 1902, when the account was balanced, was on October 22nd, 1902, when you are credited with cash \$5,000? A. I notice that.

Q. Did you deposit that in cash? A. I must have or it would not be here.

Q. Do you remember from what source you drew the money? A. No, I do not.

Q. Do you remember the circumstance of the deposit? A. I do not.

Q. Do you know the purpose of the deposit? A. I imagine it was to invest in stock. I did not do it. Something came up and I did not.

Q. That was on the 22nd? A. Of October, 1902; yes, sir.

Q. And on October 31st you withdrew \$3,500 in cash? A. That is right.

Q. Nine days later? A. Yes.

Q. And on the 3rd, three days later, you withdrew \$1,500 in cash? A. Yes, sir.

Q. And on the 17th, fourteen days later, you withdrew \$2,000 in cash? A. November 3rd was pretty close to election I guess

Q. And do you note on there further that on the 7th of November Mr. Rogers deposited \$2,000 to your account? A. Yes.

Q. Making the entire \$7,000; \$5,000 on October 22nd and \$2,000 on the 7th, and between the 31st and the 17th you drew out the whole \$7,000. Please give us the facts of that transaction? A. I see that Mr. Rogers credited me with \$2,000. That was for political purposes. It was a contribution to the committee.

Q. To what committee? A. I think it was to the county committee.

Q. Of Orange county? A. Yes, sir.

Q. Did he pay the money to you? A. He paid it here to my credit.

Q. Did you pay the money to the Orange county committee? A. I was the committeeman and the treasurer.

Q. You were the committeeman and the treasurer? A. And the State committeeman, yes.

Q. Did you expend as treasurer of the Orange county Republican committee \$2,000 of the amount advanced, made by Mr. Rogers, on account of the advances made by Mr. Rogers? A. I presume the committee did; yes, sir.

Q. Were you chairman of the committee or only treasurer? A. I was not chairman at that time. I was chairman two years before that, and treasurer.

Q. How did you spend the money, the \$2,000? A. I suppose I paid it over to the committee.

Q. You were the treasurer? A. I was not the treasurer then.

Q. Who was? A. I was one of the executive committee, not treasurer of the committee.

Q. Did Mr. Rogers tell you that he subscribed \$2,000 to the Orange county Republican committee? A. He gave me notice that he had placed to my credit \$2,000 as a contribution.

Q. Just one moment, if I may interrupt. A contribution to what? A. I won't be positive whether to the county committee or to the State committee. I was State committeeman that year. I was State committeeman four years.

Q. Will you endeavor to recall, Senator, whether you paid the money to the State committee or to the Orange county committee? A. I think I paid it to the Orange county committee.

Q. It was used for the purpose of defraying the expenses of the Orange county committee in that election, was it? A. Yes, sir, I think that was it. Possibly I may have paid some of it to the State committee, but I think not. I think I paid it to the county committee.

Q. Where were you when Rogers stated to you that he made this deposit to your account? A. I don't know where I was. He made it here and then he sent me notice that it was there.

Q. In writing? A. I presume so.

Q. And did he tell you in this letter to use it for the success of the Republican ticket in Orange county? A. No, he did not say Orange county.

Q. For the success of the Republican ticket generally? A. For the success of the Republican ticket generally, yes, sir.

Q. Do you recall any reason why he should not send it direct to the treasurer of the State committee or treasurer of the Orange county committee? A. I presume he thought I was treasurer.

Q. Did you think this money came from Mr. Rogers direct? A. No, I did not.

Q. Did he say anything about it at the time? A. No, sir.

Q. Did he say anything about having to collect it from the members of the Street Railway Association? A. No, sir.

Q. It appears from the books of Ellingwood & Cunningham that it came from Henry A. Robinson, the general solicitor of the Metropolitan, also one of the officers of the Street Railway Association. Do you recall Rogers saying anything about Mr. Robinson contributing? A. No, sir, Mr. Robinson's name was not mentioned in regard to any contribution.

Q. Can you give us any reason for this circuitous route by which money gets into speculation, that he should deposit it to the credit of Ellingwood & Cunningham, to you, and for to pay it to the Orange county committee, why was not the transaction direct? A. I presume he had some transactions with the State committee before that, but he knew me very well, and he thought that would be the better way to do it.

Q. Why did not he send it to you direct instead of putting it down to Ellingwood & Cunningham? A. Well, he knew that had an account there, or supposed I had one.

Q. I know, but at that time you had no account; your account was balanced? A. He might not have known that.

Q. Now don't you think on reflection that the \$5,000 also came from Rogers? A. No, sir.

Q. Do you think you deposited that yourself? A. I think I would have known it, if it had.

Q. Where did it come from? A. I presume I had it placed to my credit there.

Q. Wasn't it extraordinary that you should deposit \$5,000 with Ellingwood & Cunningham and do no trading at all? A. Why no, not at all. If I was going to use the money down here, that is where I probably would put it.

Q. I know, but when you bought 100 Transportation you bought it without any margin at all? A. No, they owed me. Mr. Rogers was a special partner at that time, and he owed me that money.

Q. He owed you \$300? A. \$300, and usually, when I buy stocks, what is considered good stocks, they don't always have margins from me on stocks.

Q. No, but that is what seems extraordinary, that you should deposit \$5,000 on margin when you had no stocks and made no trades? A. I think I may have had in view buying some stocks against the five thousand.

Q. Would not ordinarily the trade be made and the margin then deposited? A. Well, not when you have had business transactions with a firm for a year or two. And possibly I may have had money and thought that as good a place to go as any.

Q. Where did the five thousand come from? A. I don't know.

Q. Was it drawn on your account in the Highland Bank? A. I don't know.

Q. Would your account there show it if it was? A. I presume it would.

Q. Well, you had no other account at that time? A. Not that I recall now.

Q. Had you any other sources of getting \$5,000 except from the Highland Bank? A. Yes, sir.

Q. What sources? A. I held mortgages and held real estate. Some one may have paid me a mortgage — I don't know.

Q. If you had a mortgage paid, or sold a piece of real estate, in the ordinary course of business the proceeds of that sale would be deposited in your bank to your account and you would draw a check on that account to Ellingwood & Cunningham? A. I don't know that. I may have been down there—that money may have been paid to me here, and I may have been over there in the office and said, "Here, I will invest in some stocks, and give me the credit for the \$5,000. I knew I could go on it at any time.

Q. But any payment of that kind would not likely be made to you in currency? A. I don't know. I can't say, but it may have been. This happened eight or nine years ago.

Q. Mr. Bedell testified that he received—the books of Ellingwood & Cunningham, however, showed that he received five thousand on the same day, and he testified that he came from Rogers. Would that refresh your recollection in any way as to where this five thousand came from? A. I could not tell you where Mr. Bedell got his. He and I are not on very good terms, for two or three years, and I don't know anything about it.

Q. You mean politically or socially? A. Socially, of course.

Q. Politically, were you on good terms? A. Politically we were in the same place.

Q. And he represented one of the Assembly Districts and you the Senatorial District that went to make up that district? A. That's right.

Q. And you were not good friends? A. We were not what you call enemies, but we would speak as we met. That is all.

Q. He evidently took very good care of your legislation. You remember the bill that came over in 1900, how quickly he had it moved out of the Rules and passed in a very few days and sent back. It was not a political feeling? A. No, it was not a political feeling. He, Mr. Bedell, was a Republican, and he probably had instructions to look out for my legislation from the County Committee—perhaps from the State Committee, I don't know.

Q. You were friendly with Mr. Bedell in a business way, because I recall that you took up his 500 Transportation at 14? A. I didn't know anything about that until afterwards. I should have done it anyway, to the bitterest enemy I had.

Q. Now, this letter that you received from Mr. Rogers, calling your attention to the fact that on November 7th he had deposited this \$2,000, did he say anything as to the methods in which you should use the money in the election? A. No. He said it was for the Republican party.

Q. Just for the good of the party? A. Yes.

Q. Well, without refreshing your recollection, if I told you, Senator, that the election was held on the 4th, and this was transferred on the 7th? A. Very likely. It is entered here on the 7th.

Q. Do you think, then, that it was a contribution, as you recall now? A. Yes, sir.

Q. The election being on the 4th, that it was a contribution to the campaign fund? A. He may have told me on the second or the first and I may have used it the 1st. When I needed it I would call for it. I think I did not draw it out until I drew out on November 3rd.

Q. You think it was the 17th this was drawn? A. Yes, sir.

Q. That was some thirteen days after the election? A. Well, I needed the money just the same as——

Q. Did you use the two thousand on the expectation that Mr. Rogers would do as he agreed to, deposit it down at Ellingwood & Cunningham? A. I took his word for it, and supposed that was right.

Q. You did not ascertain whether or not he had actually deposited it? A. Oh, no. You know yourself, about election time, we don't make inquiries of happenings fifty miles away. You are very busy attending to your own duties, and you don't have any time.

Q. You are a pretty active business man, Senator, and I mistrusted that you would not go ahead and spend \$2,000 on an election on the faith of a man saying that he would put it up with Ellingwood & Cunningham, until you found out by the long distance telephone that he had put it up. A. Yes, I would put it up.

Q. With Rogers? A. With any good man—— a man that I had confidence in, that told me to spend five thousand dollars, I would spend it.

Q. You note that by the 17th you had withdrawn the whole of the \$3,000, and you say you don't recall the circumstances under

which you withdrew \$3,500 on October 31st, or \$1,500 on the 3rd, or \$2,000 on the 17th? A. No. I had use for it, or I would not have drawn it out.

Q. After that election was over, did you owe any campaign debts? A. Any what?

Q. Campaign obligations? A. Always do in political business. I owe campaign debts and paid them afterwards.

Q. And how were those debts evidenced — take it in 1902. were they notes? A. Oh, no. No.

Q. What would they in your best recollection consist of? A. Why, I remember endorsing a note of the State Committee of \$15,000, that they owed, and wanted to settle it, and I endorsed the note.

Q. That was only loaning your credit. I am speaking of personal obligations that you pay? A. Oh, personal obligations — I never was asked to sign a note for it, no.

Q. Then you don't think that this withdrawal of \$7,000 was to pay prior political obligations? A. I think the two thousand was, probably. And the November 3rd — it looks to me as though that fifteen hundred was for political purposes and spent for political purposes.

Q. Now, Senator, that would make \$7,000. That is a pretty large amount to spend in one county? A. Oh, I don't say it was all spent in that county. Rockland county was my district. and Orange county and Sullivan county, one Congressional district.

Q. You were a candidate at that time? A. 1902, yes, sir, and very much interested, too.

Q. Now, Senator, do you think that the statement you filed as to campaign expenditures would show this expenditure of five to seven thousand dollars? A. I could not tell you. I suppose the expense account shows what I actually paid out of the county funds or my own individual funds. Now, I don't remember. I have been out of politics four years and I don't remember.

Q. O course, it would show whatever money went to your hands, wouldn't it, that necessarily? A. Not necessarily, no. If I was handed \$2,000 from one man to give to another party, that would show.

Q. This transaction is, Rogers says I will put \$2,000 to your account with Ellingwood & Cunningham, and you in the meantime put \$2,000 in the funds of Orange county? A. I did not state Orange county. Now, I was State Committeeman, and that included three counties, Sullivan, Orange and Rockland, besides contributions down here. I paid a contribution down here for the State Committee.

Q. You think this was paid by assessment? A. No. I had money to pay of my own.

Q. I know, but do you recall that you used this \$2,000 to pay for the purpose of the State Committee? A. No, I did not use it for that purpose.

Q. In what way? A. I may have given Rockland five hundred of that.

Q. Not what you may have done — what did you do? A. Well, I cannot tell you. I cannot tell you, or no other man that had anything to do with politics can tell you now what he did with the money, or who he gave it to.

Q. Well, in what way did politics in those days differ from what they are nowadays? A. Well, you were running at the time, Governor. You can tell.

Q. I did not contribute to anybody — not a postage stamp even. I did not pay an assessment. I paid my own personal expenses. I don't think they amounted to \$175. I think that if I had paid \$7,000, that would be a large amount to me, Senator, that would have burned into my recollection. A. Now, it burned into my recollection in this way. We elected the Governor and Lieutenant Governor, and all that was on the State ticket at that time, and Congressional ticket.

Q. I don't doubt but that is true. But see if I cannot make myself clear. To whom did you pay the money? A. I could not tell you.

Q. Is there any way that you can refresh your recollection or could aid your recollection as to whom you paid that? A. Why, I don't know. It is possible that the State Committee's books are at your disposal, or that someone has access to them. That might explain it. Now, the County Committee's books, I don't know. I have been chairman of the County Committee for some

years, or treasurer. I was chairman and treasurer both at one time, and after I was made State Committeeman I was not chairman.

Q. Now, passing on in the account, you notice that there is no transaction until you come to January 30th, 1903? A. Yes, sir.

Q. When there is \$2,500 deposited to your account, cash? A. Yes, sir.

Q. Do you remember the occasion of that deposit? A. No, but I think that is money that I deposited there.

Q. In cash? A. In cash or check, draft or something.

Q. Well, what was the reason for this deposit? A. I don't know, unless I was going to invest in something.

Q. But you didn't invest, it seems? A. No, sir, I did not.

Q. And on February 10th, you drew it out? A. Yes.

Q. Do you recall whether or not that was deposited by you or by someone for you? A. I think that was deposited by me.

Q. What makes you think so? A. Well, I don't see anything to show different.

Q. Is that the only reason you have for thinking so? A. That is the only reason I have now. I can't remember every deposit I made with those people.

Q. Well, unfortunately, it appears here that the deposit book of Ellingwood & Cunningham for 1902 is destroyed, and consequently I cannot aid your recollection, Senator. If that book were in existence, Mr. Carpenter testified that there was a complete copy of every check in it, which would be complete, and possibly would be of some assistance? A. I did not abstract it.

Q. No, I did not make that suggestion, Senator. Now, the next transaction is on March 9th, another deposit of \$500 cash. Do you recall the circumstances of that? A. No, sir, I do not.

Q. Well, it appears from the books of Ellingwood & Cunningham — it appears from the account of Mr. Robinson in the Morton Trust Company, that a check for \$500 on that day was forwarded to Ellingwood & Cunningham, and was credited to your account. Does that aid your recollection? A. How was that — state that again.

Q. It appears from the account of Mr. Robinson in the Morton

Trust Company, that a check of his for \$500 on that day was forwarded to Ellingwood & Cunningham, and by them credited to your account. Does that refresh your recollection? A. No, sir, it does not.

Q. Well, you turned around and withdrew this on the 16th, you will notice? A. Yes, on the 16th of March.

Q. That was just seven days later. Does that refresh your recollection? A. No, sir.

Q. You notice you had already deposited \$2,500 which you drew out on February 10th, and then there is this deposit by Robinson on the 9th, which is drawn out on the 16th. A. He made no deposit for me with Ellingwood & Cunningham, because he had no reason to, and I never had any transactions with him.

Q. Well, he drew a check on the Morton Trust Company, which went to Ellingwood & Cunningham, and they credited you with \$500 on that date? A. I presume Mr. Rogers owed me that money.

Q. Do you recall for what purpose? A. No, sir.

Q. You don't recall anything in regard to the transaction? A. No, sir.

Q. Now, the next time — there is no trading, you will notice — the next item is October 21st, cash H. Special — H. Spl., \$2,000. Do you recall the circumstances of that? A. October 21st, 1903?

Q. Yes, do you recall the circumstances of that? A. That must have been a contribution for political purposes.

Q. What makes you think it is a political contribution? Simply because it comes in October? A. That is the only construction I can put on that. October 21st is about the time of the election.

Q. Do you recall whether you deposited this or not? A. I don't recall.

Q. Or whether you had knowledge of the circumstances under which it was deposited? A. I don't know what that means — H, Spl.

Q. Did you ever know a man employed by Ellingwood & Cunningham by the name of Hackley? A. No, sir.

Q. Did you ever meet him? A. I don't know.

Judge BRUCE: Is Mr. Hackley in the room?

(No response.)

Q. You don't recollect him? A. No, sir.

Q. It appears from the books of Ellingwood & Cunningham, that some time previous to that, Mr. Hackley had received \$7,500 from the Street Railway Association of the State of New York, and that on this date, \$2,000 of that amount was credited to you. Will that aid your recollection any? A. Well, that is the only inference I can draw, what that is, that it was a contribution. I am pretty sure that Mr. Cunningham and Mr. Rogers notified me to that effect.

Q. For what purpose — a contribution for what purpose? A. I imagine that was a State contribution.

Q. For the State Committee? A. Yes, because in off years, they were terribly in want of money.

Q. If they were terribly in want of money, why, during all this time, didn't the Street Railway Association, and Robinson and Rogers go to them and give it to them? Why did they continuously deposit in your account with Ellingwood & Cunningham, and you give it to them? A. Why do you ask me that question? Why don't you ask Rogers and Cunningham that question?

Q. I am going to. You got the money, and you are the one primarily to inquire of about it. A. I am giving you the best information that I have. The money probably was drawn out by me for that purpose; I think it was. It was a time of year that it was needed.

Q. You think that was the reason? A. It was not drawn out and used by me personally, I am sure. H. Special, as you call it — I don't know anything about that.

Q. But the money remained there and was not drawn out by you at election time. A. It was drawn November 4th, \$1,000, and the other, January 5th. I probably used my own money and left that in there.

Q. Yes, but again, the election occurred on the 3rd, the day before you withdrew the \$1,000. A. As I told you, I used the money before receiving it, if I knew the money was there or was going to be there, I used it.

Q. Did you know this money was there? A. I may have known it after it was there, after it was put there or after it was going to be put there.

Q. Do you recall Rogers saying anything to you? A. No, he called on me once or twice in regard to the matter, but I could not tell whether it was October 21st, 1903, or 1904, or 1901.

Q. Well, January 5th, you drew out \$1,000, in 1905. What was that for? A. I can't tell you what it was for, I drew it out, there is no doubt about that. I drew it out because I contributed my own money and paid whatever I was going to do with it.

Q. The next transaction, however, coming down the account, is on July 7th, is it not, 1904, when you bought 400 Union Pacific at 91½, and 100 at 91½ also? A. Yes, sir.

Q. Making in all over \$45,000 worth of stock, is that correct? A. I guess that is right.

Q. Well now, at that time, you had no margin up. Will you explain why — A. I didn't leave any margin there.

Q. Why was it, prior to that time, when you anticipated any purchase of stock, you always made a large deposit, one time, \$5,000? A. If you will notice, that 500 shares of Union Pacific was bought at 91½. You will also notice that it went up to 97½. It went up from the day I bought it, and I very foolishly closed it out at 97¼, when I had pretty good information that that stock would go up in the thirties. Now, that is one of the reasons why I didn't put any deposit, they didn't ask it of me.

Q. In my previous examination as to the large deposits, one time \$5,000, you said that was in anticipating of trading, and here you buy \$45,000 worth of stock, with no margin at all. A. It was probably in anticipation of buying this very stock that I bought there now, this U. P.

Q. You mean when you deposited the \$5,000 a couple of years before? A. It wasn't a couple of years before.

Q. It was October 22nd, 1902? I don't know that it was that, it might have been some other stock that I expected to buy. I can't tell all the transactions I had at that time, or what expectations I had.

Q. But the fact remains that you bought \$45,000 worth of stock without any margin — isn't that correct? A. Well, there is \$3,000 here —

Q. No, that wasn't up on July 7th. Now, you bought this 500 shares, as you say, on the 7th, and it advanced rapidly, and you foolishly sold it out? A. That is right.

Q. Then why did you on the 11th, four days after you purchased it, notwithstanding this rapid advance, deposit \$3,000?

A. I suppose I wanted a place to put it. I might have wanted to buy some other stock.

Q. I know, but they are allowing you to buy without margin, then why did you deposit this \$3,000, notwithstanding the rapid advance of the Union Pacific? A. Now, you take that Transportation stock, it needed a margin on that, didn't it?

Q. Well, you had none when you bought it? A. Yes, I did have.

Q. No, you had no margin at the time you bought it. A. Well, it wasn't in the book here, but they owed me over \$10,000.

Q. Oh, no; Ellingwood & Cunningham, when you bought your first 100 shares, didn't owe you anything — you opened your first account without margin. A. But the special partner did.

Q. But the obligation of the special partner was not the obligation of the firm, and the firm would not allow Tracy Rogers' obligations to stand as margins for a customer? A. They permitted me to do it. No man is going to put up margins unless he intends to buy something where it requires a margin, unless it is asked for.

Q. On the 18th, when you closed out your Union Pacific, you drew out \$3,000 cash? A. Yes, just what I made on the Union Pacific.

Q. On the 18th, you drew out \$3,000 cash? A. That was the \$3,000 I put in July 11th.

Q. You deposited it as margin, and on the 18th, you withdrew it? A. I didn't say I put it up as margin. I may have had \$3,000 in my pocket when I was at their office, and I said, "Here, put it to my credit."

Q. Now, coming down to the fact, did you put that up at all? A. I imagine I did, or it would not be there.

Q. Don't let us fill up the record with imagination — you have no recollection of it, is that correct? A. I have no recollection of the \$3,000. I imagine —

Q. Don't let us imagine. A. Then, to make it fair, I don't think you ought to imagine. A whole lot of it is imagination, here.

Q. Yes, I think so. Now, let us go back, Senator — A. While we are on this Transportation stock, I want to say one other thing in regard to that. The other day you rather pressed me on that being a bad bill; a bill that ought not to have passed, and about the hearings on that bill. Now, after thinking that matter over, I find that there was no hearing on that bill before the Governor.

Q. What was that? A. There was no hearing on that bill before the Governor, but Governor Roosevelt, who was a resident of the City of New York, signed that bill, and evidently signed it without a question, just the same as I did when I introduced the bill.

Q. Do you know whether he signed it without a question, or whether or not he didn't make investigation in regard to the bill? A. I was the one that introduced the bill, and I never went near him.

Q. No, I noted that, that after you passed the bill, you didn't even request the signature of the bill by the Executive? A. No.

Q. That seemed rather extraordinary to me, because I have some knowledge of your diligence as a Senator, and it seems to me that after a bill of that importance had gone to the Executive, having made the progress you have indicated, that you would go to the Executive and tell him the source from which the bill came, the necessity for it, what the bill accomplished, and why it should become a law? A. Not necessarily, nothing was said to me — it was a New York City bill.

Q. Yes, of course, it was extraordinary that you should have introduced a New York City bill, in the first place; but, having done it, it seems to me that it was your duty, perhaps not a matter of necessity, to have followed it to the Executive, and laid before him the arguments in its favor. A. Governor, I don't think any Senator goes before the Governor and asks him to sign a bill that he thinks is a good bill, and all right.

Q. Now let us go back for a minute. Don't you recall that a good many people objected to this bill, among them, a no less dis-

tinguished citizen than Lyman Abbott, the Rev. Dr. Lyman Abbott? A. Well, he lives about five miles above where I do in the country.

Q. Well, do you recall that ex-Mayor Low opposed it? A. No, he never wrote to me about it, or said a word to me.

Q. I mean, before the Executive? You have said to me that the Governor signed the bill without an inquiry. Does that refresh your recollection? A. I never was notified of a hearing before the committee in regard to the bill. If I had been, I would have been there.

Q. If I am correct in my statement, then, I assume that you withdraw your statement that the Executive signed it without an inquiry? A. I didn't say without an inquiry, I didn't mean that.

Q. Well, without objection being made? A. Well, yes, I think that. He may have had letters written to him, but I don't know anything about it. I mean a public hearing, or a public demonstration against the bill.

Q. Do you know that a number of the New York World, on the sixth of April, devoted nearly all of its front page to that bill? A. No, I do not; when was that?

Q. On April 6, 1900, the Legislature having adjourned on the fifth. Do you recollect that the New York World devoted nearly the entire front page to that bill? A. I don't know it, but then I should think that the Governor of the State of New York, being a citizen of the city of New York, would have noticed that more than I would.

Q. He probably did. A. I don't remember the occasion.

Q. If you had, you would have hastened to the Executive, to tell him that they were wrong, and that the bill was a good bill? A. I always took into consideration that it was a city bill, that the Governor was a resident of the city, he knew what was good and what was bad, and would look after it.

Q. But you didn't take into consideration when you introduced the bill, that the legislation ought to spring from a city member? A. Not necessarily, no.

Q. I say you didn't take that into consideration when you introduced the bill? A. I don't think that follows at all. I had a bill introduced by a member up in Warren county, simply because I didn't want to —

Q. Now, referring again to your account, Senator — have you it before you there? A. Yes, sir.

Q. You notice that from March sixteenth — I am referring now to the year 1903 — A. Yes, sir.

Q. From March 16th to November 1st, there are no transactions. On March 16th, you withdrew \$500 and on the 4th, \$1,000. Do you note that? A. Yes, sir, on November 4th.

Q. Now, do you recall any other transactions between those dates, had with Ellingwood & Cunningham, other than these indicated here? A. There is \$2,500, February 10th.

Q. But I am speaking between March 16th and November 4th, in 1903? A. No.

Q. Then I will go on now, finishing with the rest of the accounts. After you withdrew the \$3,000 when you sold that Union Pacific on July 18th, there are no further charges, but the balancing of the account, is there, on August 18th, when you drew out \$2,075.46 — isn't that correct? A. Yes, that is correct

Q. Balancing your account? A. Yes, sir.

Q. And that completes your account with Ellingwood & Cunningham, does it not? A. Yes, sir.

Q. Now, do you recall any other transactions, any transactions other than those which appear upon your account? A. Do you mean stock transactions?

Q. Yes, stock or money transactions? A. With Ellingwood & Cunningham?

Q. Yes. A. I do not.

Q. Now, it appears from the testimony of Mr. Cole, who was the treasurer of the Street Railway Association, the Association of Street Railways of the State of New York, that on July 24th, 1903, he sent \$10,000 in cash to Mr. Hackley? A. Who is Mr. Cole?

Q. He was the treasurer of the Street Railway Association of the State of New York. It appears from his evidence, that on that date, July 24th, 1903, he sent \$10,000 to this clerk in Ellingwood & Cunningham, this Mr. Hackley. Do you recall whether or not you received any of that money? It does not appear in your account? A. I didn't receive any of that money.

Q. If you had received any of that money, you would recall it,

would you not? A. I certainly would, because I don't know Mr. Cole at all. I wouldn't know him if I saw him.

Q. Do you recall having received \$5,000 from Ellingwood & Cunningham on July 24th — or rather, shortly after July 24th, 1903? A. I didn't have it.

Q. Do you remember having any communication or correspondence with Ellingwood & Cunningham, about your receiving \$5,000 at that time? A. No, sir. That closed my account with them, and I was not in their office after that.

Q. But this was prior to the closing of your account. I am talking about July 24th, 1903. There is nothing appearing in your account about it. I want to know whether or not you received from them \$5,000 shortly after that time? A. No, sir, I don't remember any transaction of that kind.

Q. Do you remember receiving any letter from them, or writing them in regard to \$5,000 you were to get? A. No, sir

Q. Now, I call your attention to a copy of a letter which appears in the letter copy book under date of July 23, 1903:

"HON. LOUIS GOODSSELL,
Highland Falls, N. Y.:

DEAR SIR:—

"If you will call at our office anytime after July 25, we will have \$5,000 to deliver to you.

"Yours very truly,

"ELLINGWOOD & CUNNINGHAM."

Q. Do you recall receiving that letter? A. I don't remember it.

Q. Did you get the \$5,000 from them? A. I don't remember.

Q. Didn't you go and get \$5,000 in cash? A. I don't ever remember ever receiving a dollar there.

Q. Would not the payment to you of \$5,000 in cash in July, 1903, have impressed itself on your memory? A. I think it would. I think if I got \$5,000 I would remember something about it unless it was in some account here that he owed me.

Q. No, it does not appear in your account at all. It is abso-

lutely independent of your account. A. I don't remember going to their office and getting \$5,000.

Q. Do you remember receiving a letter saying that if you would come down there there would be \$5,000 for you? A. I don't remember the letter.

Q. That would certainly have made an impression on your memory, Senator. A. I should think so; it certainly would now.

Judge BRUCE: That is all.

WILLIAM W. COLE, recalled, testified as follows:

Examination by Judge BRUCE:

Q. Do you recall that you were to produce a book which you stated you carried about in which you entered as personal memoranda the moneys received by you as treasurer for the Street Railway Association? A. Yes.

Q. Have you made a search for that book? A. Yes.

Q. Have you found it? A. Not yet. It is in the files, but I got my letter book that contains all the data that that had, in this note book.

Q. I received receipts — unbound sheets from your letter book, but I find there are a good many pages missing. How is that? A. There have been no pages missing that I could tell you about.

Q. Is that all there was of that book? A. That was another part of the letter book. That is the first part. When I first went in as treasurer that is the first part. There are other books which Mr. Beardsley has in connection with that.

Q. These sheets were taken out of the bound book? A. Yes, sir.

Q. Why did you start with page 86? A. That is the time when I started. I had nothing further than that.

Q. Why then do you jump from page 88 to page 90? A. That I could not tell you.

Q. And then to 92, and then to 98, and then to 100, and then to 108, and then to 110? Why these omitted sheets? A. Well, the reports are taken just exactly as they were given to me from the files.

Q. And some of them are only half sheets, sheets cut off in that way (indicating). A. The letters were copied in that way.

Q. Where is the rest of this book, the balance of it? A. Mr. Beardsley has it.

Q. Is he here? A. Yes.

Judge BRUCE: Is Mr. Beardsley here?

Mr. BEARDSLEY: Yes.

Judge BRUCE: Have you the balance of this book?

Mr. BEARDSLEY: In explanation of that I would like to say —

Judge BRUCE: I don't want your explanation. I want the balance of that book.

Mr. BEARDSLEY: No, not of that book.

Q. He says he has not got it. Did you deliver it to him? A. No, that is all I know about that book; it was delivered to me from the files.

Q. By whom? A. Mr. Beardsley.

Q. When? A. Last night.

Judge BRUCE: Mr. Beardsley, will you please take the stand? Will you allow Mr. Beardsley to take the stand for a while, please?

H. M. BEARDSLEY, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside? A. Elmira, New York.

Q. What is your business? A. I am secretary and treasurer of the Elmira Water, Light and Railway Company

Q. Do you hold any other position? A. I am treasurer of the Street Railway Association of New York.

Q. How long have you held that position? A. Since 1906.

Q. Were you served with a subpoena to produce here all the books, papers, documents, letters and communications with reference to the business of the Street Railway Association? A. Yes, sir.

Q. Why didn't you produce these sheets that Mr. Cole just said you gave him? A. Is an explanation in order now?

Q. No, why did you not produce those sheets? You received

a subpoena to bring certain papers and those are omitted. Why? A. Those were copied in the books of the Elmira Water, Light and Railway Company, and the Street Railway Association had no letter copy book at that time. A little later, when it was found that there was going to be considerable correspondence, all the letters from Elmira Water, Light and Railway Company, which referred to the Street Railway Association matters, were taken out and put in the files of the Street Railway Association books. The missing pages there related entirely to the correspondence of the Elmira Water, Light and Railway Company.

Q. Are they in existence? A. Yes, sir.

Q. Who made this sorting out? A. That was by me.

Q. When? A. At the time.

Q. At what time? A. About the 1st of January, I think, 1904.

Q. When I subpoenaed you to produce all the papers and documents relative to the business of the Street Railway Association, why didn't you produce these, I don't care where they were? A. I did.

Q. You did? A. There it is.

Q. You gave it to Mr. Cole, you did not produce it to me. A. Oh, I see what you mean. At the time I came down here last I had not found that book.

Q. What? A. At the time I came down here last I had not found that book.

Q. You knew about it, didn't you? A. Well, I ——

Q. You knew about it, didn't you? A. Well, now ——

Q. Reflect before you answer. A. I knew that there was some correspondence that I have produced.

Q. Why didn't you produce it? A. I didn't know where it was.

Q. Didn't you come to me and tell me that you had produced every paper that you had? A. Yes, sir.

Q. Or that you knew about? A. Yes, sir.

Q. Or that you had any means of ascertaining that you knew of? A. Yes, sir.

Q. And we have this whole correspondence that you turned over to Mr. Cole. Why didn't you come to me and say you

made a mistake, "I have found about this and did not bring it down the other day?" That I have found this and did not bring it down the other day? A. That correspondence related to Mr. Cole, treasurer of the association.

Q. That is true, but you knew you were under subpoena. You knew you had come down and made these statements to me. Now, when you discovered that material why do trot off to Mr. Cole with it instead of bringing it to me? A. Well —

Q. Now, I wish you to produce the balance of that book. A. The balance of that book (indicating).

Q. Yes, where is it? A. In Elmira, because it has nothing to do with the Street Railway Association matters.

Q. I will ask that? You produce it. That will be for me to determine. A. Very weell.

Chairman MERRITT: Are those extracts all from one book or from the series of books?

The WITNESS: I don't remember; I think so, probably.

Judge BRUCE: All from one book.

Senator WAGNER: The witness is not certain about that, whether from one book or not.

Q. You are not certain about that? A. No.

Q. I want every book of which that is a part. A. All right, sir.

Q. How long have you known Mr. Cole? A. About ten years.

Q. How long have you been secretary and treasurer of the Street Railway Association? A. I have never been secretary. I have been treasurer since 1906.

Q. Have you the books of the Association — that is, the treasurer's books? A. I have all that are in existence.

Q. What are they, what books did you keep as treasurer? Let us take that up first. A. I kept a check book and a blank book.

Q. Since what time? A. All of the time.

Q. Since 1906? A. Yes, sir.

Q. Have you those check books and bank book? A. I have the bank book; I have not the check books.

Q. What were in the check book? A. Disbursements made on account of the association.

Q. And also deposits showing receipts? A. Yes, sir.

Q. Where are they? A. The check books?

Q. Yes. A. Been destroyed.

Q. Been destroyed? A. Yes.

Q. Well, when were they destroyed? A. At the time we got through with them.

Q. When did you get through with them? A. When the last check was withdrawn — I will modify that, not when the last check was drawn, but when my accounts were audited at the end of the year.

Q. Who destroyed them? A. Well, I presume I may have destroyed them; the stenographer may have destroyed them

Q. By whose authority? A. By my authority.

Q. Well, now, this association did not have very voluminous records, they were not occupying very large space, why as soon as your accounts were audited did you hastily destroy the check books? A. Because every dollar of receipts and every dollar of expenditures on behalf of the association were stated in detail in the annual reports and printed.

Q. Did you keep the return vouchers? A. I have, I think, all of the vouchers during my period as treasurer.

Q. From 1906? A. Very nearly all of them; there may be some missing.

Q. How many may there be missing? A. I could not tell without checking them all over.

Q. About how many do you think? A. I could not say.

Q. How are you going to check them over if you haven't your check book? A. I have the printed record of the proceedings of the association. I have, I think, a complete set here from 1904 up to the time I became secretary.

Q. Is not your check book, as treasurer of this association, the record of the sources of its income — What were the sources of its income? A. Annual dues from members.

Q. What did they amount to? A. I would have to refresh my memory a little.

Mr. KRESEL: What do you want to see?

The WITNESS: I want to see the annual reports.

Judge BRUCE: Just get them.

(Witness leaves stand and gets annual report.)

Q. What did that amount to? A. From June, 1905, to June, 1906, there were \$5,200.

Q. Those were the dues during that year? A. Yes.

Q. Were there any assessments levied upon the companies those years? A. No, sir.

Q. There were not? A. No, sir.

Q. Had there been prior to that time to your knowledge? A. Yes, sir.

Q. Do they appear in that annual statement and in those annual reports for those years? A. I cannot testify to what occurred before I was treasurer.

Q. Here is a report for 1903. Let me see if any assessment appears there (handing). Any assessments appear there? A. No, sir.

Q. Well, if assessments were levied and paid in they would appear in the deposit book, wouldn't they? A. I suppose they would.

Q. Yes. Well, then, if any assessments were made in 1903. for instance, then the report as published did not show the entire income for that year, did it? A. No, sir.

Q. Now, the evidence shows here that there came out of the treasury of that company for 1903, during June and July, \$20,000 to one person. That does not appear there in that account? A. No, sir.

Q. Then this harmless account that is published every year. prior to the time that you became treasurer, did not show the entire receipts? A. It evidently did not if there were assessments.

Q. Mr. Cole testified that during the time he was treasurer you were his secretary. Is that true? A. If he meant by that his personal secretary — I do not think he did mean that — he was mistaken, because I was not.

Q. What was your relationship to him? A. At the time he ceased to be treasurer of the association I was secretary of the Water, Light and Railway Company and he was general manager.

Q. That is probably what he meant? A. Yes, sir.

Q. He says when he went out of office he turned over all his books as treasurer and secretary to you? A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

Q. Did you receive them? A. I suppose I did.

Q. What did you do with them? A. I kept them.

Q. Where are they? A. All the accounts of the secretary, so far as my recollection goes, were simply bound volumes of these proceedings and of the Street Railway Association.

Q. What about its books as treasurer? A. There were no books except the check book and that little ledger there indicating).

Q. He testified he kept a cash book. Did he turn a cash book over to you? A. I don't know of any cash book.

Q. He stated that he kept a minute book as secretary, wherein there appeared certain resolutions passed by the executive committee with reference to the payment of part of this \$20,000. Do you know where that book is? A. No, sir, I do not know that there was such a book.

Q. On page 63 of the minutes Mr. Cole testified, "There was a cash book and a bill book." Do you recall that? A. No, sir.

Q. "Which were all kept by Mr. Beardsley for me." Did you keep those books for him? A. I kept his cash account as treasurer.

Q. In what kind of a book did you keep that? A. In the check book.

Q. Where is that check book? A. Not in existence so far as I know.

Q. He says he turned it over to you. Where is it? A. Not in existence.

Q. Do you know where it is? A. If it is not in existence I can't tell you. No.

Q. Did you destroy it? A. Yes, sir.

Q. You did destroy it? A. Yes, sir.

Q. By whose order? A. I was through with it; nothing more to do with it.

Q. Was it the rule of this company as soon as you got through with a record to hastily destroy it? A. I do not think — I think your question goes too far, "Hastily destroy it."

Q. I will modify my question, to destroy it without haste, but

with certainty. A. The books after the accounts were made up and audited and printed — there was no further use for them.

Q. Why, Mr. Beardsley, you have just told me these assessments never appeared in these annual reports, and when I showed you that \$20,000 had been paid in one month it did not appear there. Why do you say the records were destroyed because they permanently appeared in those reports? A. You asked me about something I don't know anything about.

Q. Mr. Cole says you kept his books as treasurer. A. The first work I ever did for the Street Railway Association was in October.

Q. What year? A. 1900 — about — well, the year he became treasurer. About 1903 and 1904.

Q. He first became treasurer when he succeeded Henry A. Robinson. He became treasurer in 1903, is that correct? A. Yes, 1903.

Q. How far back have you these annual reports? A. 1904, I think, is the first.

Q. You do not have the report for 1901? A. No, sir.

Q. It appears from the evidence here that he made delivery of this money, that was raised by assessments through the firm of Ellingwood & Cunningham, to men connected with the Legislature. Has this association had anything to do with the Legislature or people connected with it since you were connected with it? A. No, sir.

Q. Have you, since you were connected with it — has it paid out any money to members of the Legislature or to any officers of the Legislature? A. No, sir.

Q. None whatever? A. No, sir.

Q. Who is T. W. Wilson? A. General manager of the International Traction Company, Buffalo.

Q. What connection did he have with the Street Railway Association in 1908? A. He was president from 1907 to 1908.

Q. What was your connection with it that year? A. Treasurer.

Q. Did you make all the disbursements? A. Yes, sir.

Q. I ask you again whether you, as the distributing officer made any disbursements to any member of the Legislature or any

officer or employe of the Legislature, either directly or with your knowledge, during the years you were connected with the association? A. I did not.

Q. Did you keep any track of legislation during those years? A. No, sir.

Q. Did you during the year 1908? A. No, sir.

Q. Did you have anyone with you connected in direct legislation for you — I mean speaking now of the association and you as one of its officers? A. Not so far as I know.

Judge BRUCE: I show you a letter dated Buffalo, New York, March 20, 1908, on the paper of the Street Railway Association of the State of New York:

"H. M. BEARDSLEY,
Treasurer, Elmira, New York:

DEAR MR. BEARDSLEY:

In accordance with my telegram this afternoon, copy of which is enclosed, kindly send to Mr. C. H. Betts, Lyons, New York, as soon as possible, a check for \$300 by registered mail, same being on account of the amount due him for furnishing information to members of the executive committee of the Street Railway Association of the State of New York. After you have paid this \$300 his account as far as I recollect it will stand as follows:

Total amount to be paid him.....	\$1,750 00
Less amount allowed to him, including check for	
\$300 as per above.....	1,300 00
Balance still due him.....	\$450 00

Yours very truly,

T. W. WILSON."

Q. Did you receive that letter? A. Yes, sir

Q. Did you pay the money? A. Yes, sir.

Judge BRUCE: Now read my previous question.

Q. "Did you have anyone with you connected in direct legislation for you — I mean speaking now of the association and you

as one of its officers?" Now, do you wish to change your answer? A. I do not see that this bears on the question, on that question.

Q. I ask you whether you or any officer of the association or anyone connected with you had paid any money since you became an officer of the association to any member of the Legislature or any employe thereof for any purpose whatsoever. I asked you that and you stated no. A. Yes, sir.

Q. Is that correct? A. Yes, sir; was Mr. Betts a member of the Legislature?

Q. No, who was Mr. Betts, do you know? A. No.

Q. Do you know whether he was connected with the Legislature or not? A. No.

Q. What was that money paid to him for? A. It says for furnishing information, I suppose of the progress of bills.

Q. Do you recall my asking you if you kept track of legislation? A. Yes, sir.

Q. Do you remember stating you did not? A. I do.

Q. Do you remember my asking if you kept track of legislation and that you stated you did not? Do you wish to modify that answer? A. Did you ask me for keeping track of legislation?

Q. I asked you if you was keeping track of legislation. You said not? A. I said not.

Q. I asked you if you paid anyone for keeping track of legislation. You said no. Now, do you wish to modify your answer — do you? A. Yes, I think I do, as far as the association was concerned. You asked me what I assumed was a personal question.

Q. Do you know who Mr. Betts is, what his connection was with the legislation? A. No, sir.

Q. Had you ever met him? A. No, sir.

Q. Did you ever have any communications with him? A. I presume I sent him the check as asked for. I may have had that communication.

Q. Did you receive a receipt? A. I don't know.

Q. You had within your custody the correspondence connected with the association, did you not? A. As far as related to the treasurer's work, yes.

Q. Well, was not you aware that at that time Mr. Betts was

an employe of the Assembly, connected with the Revision Committee? A. No, sir.

Q. Did you receive this telegram that I show you from Mr. Wilson on the same date that you received the letter (showing witness telegram)? A. It bears all the earmarks of having come through. I don't know whether I received it or not. I presume so.

Q. Well, you produced this from your files. What do you think, whether you received it or not? A. If it came from our files we did, of course.

Q. Did you receive this telegram on the same date? A. Well, evidently, this came by mail. It is marked, confirming.

Q. This was confirmatory of the one I first showed you? A. It would appear that way.

Q. This telegram reads: "Buffalo, New York, March 20th, 1908. H. M. Beardsley, Treasurer. Send check for \$800 by registered letter immediately to C. H. Betts, Lyons, New York. T. W. Wilson." Did you send it? A. Undoubtedly.

Q. I show you another telegram dated April 23rd, 1908, furnished from your files. Did you receive that? A. You say it came from our files. I say yes.

Q. "Buffalo, New York, April 23, 1908. H. M. Beardsley. Send Betts immediately to-night Albany check for amount still due him on account furnishing information to the association. T. W. Wilson." A. Yes, sir.

Q. He was then furnishing information to the association, was he? A. Yes, sir, it appears so.

Q. Now, I hand you your twenty-sixth annual meeting report of 1908. Please show me where these payments to Mr. Betts appear in that report. You say all your payments appeared in your annual reports, and you thereupon describe the check books. Is it there? A. No, it is not in there.

Q. Does not seem to appear. Was not an expenditure of \$1,750 rather a gross omission from the annual report? A. There are no items there, I see.

Q. Do not other disbursements appear in the annual report? A. No, they do not.

Q. Then why did you tell me that your disbursements all ap-

peared in your annual report, that you had no further use for your check books, and destroyed them? A. I don't know why it was not put in there, I am sure.

Q. Well, there are none in there? A. Not for that year.

Q. Now, what did you pay Mr. Betts in 1909 — this is not so long ago — just look at the annual report for that year, and see what you paid him? A. I think Mr. Kresel has a copy of that. I have not a copy here.

Q. Did not you bring one? A. I thought you had one here the other day, so I did not bring one.

Q. Please turn to the annual report for 1909 and look among disbursements and see how much if anything you paid Mr. Betts in 1909? A. Nothing at all.

Q. I show you another, which you have produced from your files, March 20th, 1909, on paper of the Ten Eyck Hotel, Albany, New York:

“MY DEAR WILSON:

I am sorry not to have seen you again before you left Albany. I was so busy on the hill that I was unable to get away. Everything is going all right, and I have the list corrected up to date. You will see that the Whitley School bill is reported. Do you want to oppose this bill? If so, on what ground? I wish you would have the kindness to send me by registered letter on Saturday \$250 or \$300, if convenient. My expenses are very heavy just now. If you have any suggestions to make I will be glad to receive them.

Yours truly,

C. H. BETTS.”

Did he receive the money which you sent to him? A. That is not for the Street Railway Association.

Q. It is written to Mr. Wilson, president of the association. You have produced it from your files. Did you send him any money? A. We did not send him any money from June, 1908, to June, 1909.

Q. How do you know? A. Because it does not appear in this report.

Q. I know, but the \$1,750 don't appear in the previous report?
A. The previous, — the present report don't seem to be itemized.
Here it is.

Q. Are you sure you did not pay him any money then? A.
Absolutely.

Q. Then he did not receive then the money asked of Mr.
Wilson? A. No, sir.

Q. Are you confident of that? A. No, I don't know what he
asked of Mr. Wilson. I know the Street Railway Association did
not pay him any money — I am sure of that.

Q. Well, did you pay money to anyone else for information
regarding legislation in 1909? A. Yes, sir.

Q. Why, I thought you told me sometime ago that you did not
pay anyone for legislation since you became treasurer? A. Not
for legislation.

Q. For information concerning legislation? A. Did I say
information?

Q. Yes, that is what I particularly asked you about, and you
later corrected it. Whom did you pay in 1909? A. The Legis-
lative Index Publishing Company.

Q. How much? A. \$275.

Q. Who were they? A. I believe they are a concern in
Albany.

Q. What is their business? A. Furnishing copies of bills,
I believe.

Q. Who constitutes the company? A. I don't know.

Q. Have you ever had any correspondence with them other
than sending them this fee? A. I have not.

Q. Did you pay anybody else during that year 1909, besides
the company to which you have just referred? A. I see down
here, Information Bureau \$250.

Q. Who was the Information Bureau? A. I could not tell
you now.

Q. I refer to your check stubs numbered 19. Does that re-
fresh your recollection? A. Oh, yes.

Q. Who was it? A. Ellis J. Staley.

Q. Who is he? A. I understand he is an attorney in Albany.

Q. Now by the aid of this fragmentary correspondence and

one check book, you see, we have been able to materially refresh your recollection, from which we have discovered these payments aggregating considerably over \$2,000. Do you think, Mr. Beardsley, if you had not destroyed the other check books, that perhaps there would have been entries there that might still further refresh your recollection? A. It is barely possible, but I could not say.

Q. I show you a book entitled "Ledger." Will you tell me what it is? A. It is an account book, of the dues paid by members of the Street Railway Association.

Q. Covering what period? A. The first entry here seems to be in 1896.

Q. How late did it extend? A. There seems to be entries here as late as 1905.

Q. Who kept it? A. The entries in 1904, for 1904, 1905 and 1906 are in my writing.

Q. How about 1903? A. The entries for the year beginning December 1st, 1903, and ending December 1st, 1904, are in my writing. I say, for 1904, 1905 and 1906.

Q. Why did you discontinue the keeping of that book? A. An unnecessary amount of bookkeeping.

Q. Well, it contains simply the dues paid by the members of the association, does it not? A. Yes, sir.

Q. How does it happen that you omitted from it these assessments aggregating twenty to fifty thousand dollars — \$20,000 during two months in 1903, how do they happen to be omitted, — one month in 1903? A. You are asking me something that I don't know anything about, except I knew there was an assessment.

Q. Well, now, wasn't it a most extraordinary matter, Mr. Beardsley, that these assessments aggregating over \$20,000 in one month are not entered in the book at all? (No answer.)

Judge BRUCE: A statement was made during my examination that the Mr. Betts referred to was an employe of the Assembly. In order to make sure of it, I have examined the Legislative Manual for 1908 and 1909, and I find that he was not an employe of the Assembly. The statement was made to me during the course of the examination, and I wish to withdraw that, and have it appear upon the record that he was not an employe.

Q. Now, Mr. Beardsley, have you in your possession here or elsewhere or under your control, or any knowledge of the existence of any other records of the Street Railway Association of the State of New York, other than you have produced? A. Well, other than the vouchers, check vouchers that I had here last week, that I did not bring down. I have some paid bills here — not very particular though.

Q. How far back? A. I think Mr. Kresel looked over the most of these.

Mr. KRESEL: If they are those that I looked over, they are not of any assistance.

Q. I wish to have you produce the book from which these sheets were taken, or books. You say they are in Elmira? A. Yes, sir.

Q. And will you produce them at the hearing on next Wednesday? A. Next Wednesday, yes, sir.

Q. Perhaps you would not be able to produce them sooner than that? A. I can get them here to-morrow morning, I think.

Q. Well then, bring them to-morrow morning, if you will? A. I will telegraph up and get them, if you want me to.

Q. Or Friday morning? A. To-morrow will do as well for me, if it suits you just as well. If I cannot get them here to-morrow, I would rather not wait over.

Chairman MERRITT: The Committee stands adjourned until 11 o'clock to-morrow morning at the same place.

Adjourned until Thursday, September 15th, 1910, at 11 A. M.

FIFTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,

NEW YORK, September 15th, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ISIDOR J. KRESEL, ESQ., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order. Counsel will proceed.

WILLIAM W. COLE, recalled:

Examination by Mr. BRUCE continued:

Q. Mr. Cole, if I' recall correctly your evidence you were elected treasurer to succeed Mr. Henry A. Robinson on June 2nd, 1903, were you not? A. I was elected at the executive meeting, but not at the regular association meeting.

Q. About that time, was it not? A. June 2nd.

Q. June 2nd, 1903? A. Yes, sir.

Q. Now, in your examination, which appears on page 67 of the minutes, you stated when I inquired for the book to which you referred yesterday, and which you have been unable to find,

I asked you "Q. What was in this book." You answered, "A. I kept track of the amounts of money coming in just as I would in my railroad, moneys coming in, bills receivable, bills payable, &c.," and on page 79 I inquired about "this memorandum book you kept, if it is in existence would show, would it not," referring to the annual dues the association received, and you say, "A. Why no, because that showed my deposits that I kept personal track of, because I had a number of deposits of different companies. Q. These contributions were deposited? A. Oh, yes. It will show the contributions, yes, sir. Q. They were deposited with the Chemung Canal Trust Company? A. Yes, sir." Now, Mr. Cole, I am exceedingly anxious, notwithstanding having received this correspondence which was produced yesterday through you and Mr. Beardsley, I am exceedingly anxious to get hold of that deposit book or memorandum book. Do you think you would be able to find it? A. I would like to explain that if I may, that I had about fourteen different companies I was connected with, and I had a great many loose leaf books that I kept. Those were put away in various boxes, etc., and after I left the company, they were sent, some of them, to the Rahway Valley Company, and the different companies with which I was connected. Among them I have seven boxes at Day & Dodge, and I am having men go through with them, and I hope I may find it yet.

Q. I hope they may, because it would be exceedingly valuable to us. Now, when you became treasurer, you received from Mr. Robinson the account book — he was the previous treasurer, was he not? A. Yes, sir.

Q. You received the account book, the check book, account to date, vouchers, and pass book on the Morton Trust Company, did you not? A. Yes, sir, of the regular dues of the company. When I went in as treasurer it was told me by Mr. Rogers that I would only have the accounts of the regular dues to look after until the regular election, October 7th, at Syracuse, when I was regularly elected as secretary and treasurer of the association before the entire board. Mr. Robinson continued as secretary of the association up to October 7th, and he looked after most of the accounts, excepting the dues, which were paid to me.

Q. Now, in your letter of June 20th, 1903, to Mr. Henry A.

Robinson, 621 Broadway, New York city, you say, "My Dear Mr. Robinson: Yours of the 19th inst. enclosing account book, check book, account up to present date, vouchers for account, deposit book in the Morton Trust Company, statement of unpaid dues, and check book received." You doubtless received that?

A. Yes, sir.

Q. Now, what I am endeavoring to do, I haven't any ulterior motive, it is so exceedingly important to this investigation that we should discover any remnants that may be yet undestroyed of the records of this association that I want to endeavor, if possible, to refresh your recollection, and also that of Mr. Beardsley in every way at my command, to see if there is not some way of discovering, if possible, some records of the association that have not been destroyed. Do you recall what was done with those books when you got through them, the books to which you refer in this letter of June 20th, 1903? A. Everything I had was turned over to the association.

Q. That is rather an indefinite statement — "to the association." To whom representing the association? A. The secretary's book was turned over, I believe, to Mr. Fairchild, who succeeded me, and all other accounts which I had were turned over to Mr. Beardsley and the president of the association.

Q. That is the last you have seen of them? A. Yes, sir, I have not had any further reference to them.

Q. Did you destroy any of them during your term of treasurer? A. Absolutely nothing, except some sheets that I may have figured balances on and so forth. The correspondence I have.

Q. Did you destroy any checks or vouchers at all? A. No, sir, not a check or voucher destroyed.

Q. Or check book? A. No, sir.

Q. Cash book? A. No, sir.

Q. Bill book? A. No, sir.

Q. Or the account book with the trust companies? A. No, sir, I destroyed nothing.

Q. Those records were not so very voluminous, were they? A. No, sir.

Q. They didn't occupy very much valuable space, did they? A. No, sir.

Q. Do you have any idea why the change of policy occurred later to destroy everything just as soon as the annual account was made up? A. It was decided that all accounts would be in printed form, and absolutely that everything that the association did would be made public, and that everything would be printed, and then on account of a change of officers it was decided upon, every year a different president and executive board, that it would be too large an accumulation of material, that everything would be printed, and when accepted by the executive committee that would end it.

Q. When was that decided upon? A. That was practically decided upon when I was really made secretary and treasurer of the company.

Q. But you didn't do that, you preserved these and turned them over. If that was decided on as a matter of policy, why didn't you follow it? A. Merely because I have carried everything practically that I have when I am in active duty.

Q. You followed your personal method and the method of most organizations doing a reputable and legitimate business by preserving records at least for a number of years? A. I kept a loose leaf fly book that I have.

Q. Did any of the officers of the company ever take you to task for not destroying the records? A. No, sir, never.

Q. Notwithstanding they had entered upon a policy of destruction? A. No, sir. The only time I was taken to task was when I discovered that there was a deficit.

Q. Now, you were present yesterday when Mr. Beardsley was examined? A. Yes, sir, I was.

Q. And you probably inferred at least from his evidence that notwithstanding this policy of publishing broadcast to the members of the association every expenditure, that there were some very important expenditures that did not appear in the statement, did you not? A. I was not aware of that fact.

Q. I say you discovered that yesterday? A. I discovered that there were some expenditures, evidently.

Q. Now, these expenditures, to pass over them at present, concerning which I examined Mr. Beardsley yesterday, referred to moneys paid for the purpose of keeping track of and obtain-

ing early information of proceedings in the Legislature at Albany. Now, Mr. Cole, during your term as treasurer, or your term in connection with this company in any respect whatsoever, did you or anyone else with your knowledge pay any money to any person for the purpose of obtaining information, either early or late with reference to legislation in Albany? Now, a moment's reflection, please, and then give me your answer. A. Why, yes, sir, I believe we all undertook to keep track of bills affecting railroads, taxes and all that sort of thing. I think it was part of the manager's duty that he should know what the laws were, and what might affect the operation of the road.

Q. I don't think you understood my question. Will the stenographer please read it.

(The question was read to witness by stenographer.)

A. Yes, sir, I think it was the Fox Bureau that furnished us papers.

Q. Do you remember how much you paid them? A. I am not absolutely sure; I should say it was in the neighborhood of three hundred to perhaps five hundred dollars a year.

Q. Do you remember during what years? A. Why, that came in 1904 and 1905.

Q. That was a bureau which was operated there by Mr. Reuben L. Fox, who was lately deceased? A. Yes, sir, and they merely sent out these bills, and I would look them over to see what might affect street railroad operation.

Q. Now, again, Mr. Cole, after a moment's reflection, because I don't want to seem to be hurrying your memory, did you or did this association to your knowledge pay any money to anyone else, other than the Fox Bureau that you have mentioned for information in regard to the progress of legislation, either on the floor or in the committees at Albany? Just search your memory, Mr. Cole. It is some years ago, you know. A. Yes, quite a few, I find. Well, I am not sure whether there was any other press bureau at the time or not, but there was nothing more than to get the bills and that sort of thing.

Q. Yes, I understand that. Did you pay any money for that purpose as stated by me in my question, to any other person

or concern than the Fox Bureau? A. Not unless there might have been some other bureau there at the time.

Q. Did you pay any money directly or indirectly to any individual, whether an employe of the Assembly, or the clerk of a committee, or of the Senate, for information in regard to the progress of legislation? A. Why, I am not sure. If I could look up the records, I could tell.

Q. Yes, but they are destroyed. A. There was one case —

Q. I know, but unfortunately they are destroyed, I understand. A. No, sir. I have my letter-book that I have also brought this morning, and I have not had a chance to go over it yet.

Q. Now, Mr. Cole, you would recollect if you paid any money to any member of the Legislature or employe for the purpose of furnishing you information — the association information — in regard to legislation? A. Well, personally I did not, no, sir.

Q. Did you have knowledge of such payment? A. I would like to look over the accounts and see.

Q. What accounts do you refer to? A. I don't mean accounts, I mean my letters which I have on file, of all the letters I wrote here, practically, and I have my letter book.

Q. You mean other letters which you gave to me that I have here? A. Yes, sir.

Q. No other than those? A. Yes, sir, I have some more.

Q. Just bring them, please. Will you bring them up here. Mr. Cole? Are these records of the association? (Referring to letters produced by the witness.) A. Yes, sir.

Q. Where did they come from? A. They came from my old files at Elmira, from a box that I have had there at the power house.

Q. When did they come here? A. I got them day before yesterday.

Q. We called for the production of all records. How did they come in this morning? A. Because I just brought them here.

Q. But why did not you bring them before? You told me you would bring all of the records. A. Well, I want to take a glance. I have Rahway Valley, I have sent out —

Q. Yes, but you told me that, day before yesterday, you had

these here. Why were they not placed at the disposal of the Committee? A. Because I wanted a chance to look them over, and see whether they were personal books or not.

Q. But why did not you request for that opportunity? I would readily have granted it. It is fortunate that I asked you this question, or it might have slipped your memory. A. No, it would not have slipped my memory.

Q. Now will you examine? A. I don't hardly know now but what they are Rahway Valley. I have seven or eight books that were Rahway Valley. That's all right.

Q. Well, just examine the books generally, and state, Mr. Cole, whether or not every communication in that book, or practically every one, so far as you can examine, covering some five hundred pages, do not refer to the business of this association. A. I think that they do; yes, sir.

Q. Now will you examine them, please, and state to me and answer my question. Well, in order to save time, Mr. Cole — A. Yes, but I found what I was after.

Q. Oh, you have? A. Yes, sir.

Q. Now kindly answer my question. A. Yes, sir.

Q. To whom? A. To Miles R. Frisbie.

Q. Who was Miles R. Frisbie? A. Well, I don't know whether at this time, that he was connected with the Legislature or not, but he was at one time Assemblyman.

Q. From what county? A. From Schenectady.

Q. What year did you pay it to him, the moneys? A. In 1905.

Q. How much? A. \$200.

Q. These were bills, referring to payments for legal services. Do you recall what the service was? A. Why, it was some advice on some bills at that time, but I don't remember the bills, because I did not personally keep track of those at all.

Q. Was it advice on some bills or information as to the progress of bills? A. Why, I could not say as to that.

Q. Are you quite sure? A. Quite sure, yes, sir.

Q. Well now, did you pay money to anyone else than Mr. Frisbie? A. I don't remember anyone else, no, sir.

Q. Well, will you look through this volume of correspondence at recess time and let me know if you discover any other payments? A. Yes, sir.

Q. In order to save time I will defer that line of questions. Now did you or did the association pay any money to any member of the Legislature to influence his action upon any bills? A. I did not, and no member of the association to my knowledge did, at any one time.

Q. Did you know of any payment being made to members of the Legislature for any purpose? A. No, sir.

Q. Not for any purpose? A. No, sir.

Q. Either to influence their action upon bills or for any other purpose? A. No, sir.

Q. Now I understand your answer to be that you did not nor was there to your knowledge any money paid by the association or from its treasury to any member of the Legislature? A. That is correct.

Q. For any purpose whatsoever? A. Quite correct; yes, sir.

Q. That is, paid to them directly or given to some other person to be transferred to them or transmitted to them? A. No, sir.

Q. Now in this letter — you state to me that when you succeeded Mr. Robinson the books were turned over to you, in which the accounts of dues were kept; is that right? A. Yes, sir.

Q. Were there any other accounts? A. No, sir, I had no other accounts at that time.

Q. Were there any other accounts? A. Why, that I could not say.

Q. Now see if I cannot refresh your recollection. You had two sources of income — you had the dues? A. Yes, sir.

Q. Which are published broadcast in your annual report? A. Yes, sir.

Q. Now did you have any other source of income? A. There was an assessment fund at that time.

Q. Oh, assessment fund. Was there any track kept of that? A. I kept no track of that; no, sir.

Q. What was the assessment fund? A. Well, there was some special assessments outside of the dues, which had been assessed to the companies to take care of conditions outside of — well, printing reports, and the regular meetings, etc.

Q. I understood from you that the main purpose of this organization was to hold an annual banquet and to have meetings

from time to time, at which subjects relative to the betterment of the railroads were discussed, is that right? A. Yes, sir.

Q. Now what other conditions were there outside of that that needed assessments to take care of? A. Well, since my time there has been none — that is, since I was an officer of the association.

Q. Say before your time. A. Well, that I could not say only from presumptive — what I thought.

Q. Well, anything, any information that you acquired from any member of the association or any of the officers of the association or previous officers of the association. A. Why, it is really presumptive on my part.

Q. I don't want it presumptive or guessing. I want to know what they told you in regard to it, if you recall. I make this suggestion, in order to aid you in giving your answer to the question, that these assessments were in quite large amounts, running up to \$8,000, \$6,000, leaped up to \$10,000 and \$20,000. Now what conditions were there outside of the usual workings of this association which required these large amounts of money? A. Why, I had understood from Mr. Rogers that it was political purposes.

Q. Political purposes? A. Yes, sir.

Q. Then besides giving banquets and having these harmless meetings — and useful meetings, I have no doubt, to discuss subjects that were of interest to the railway company, this association did have some other business, did it? A. Why, that was previous to my time.

Q. But it did, I say, of course. I am referring to that time. A. I believe they did have some other business.

Q. And that other business was looking after political matters, was it, and legislative matters? A. Why, I should presume, protecting franchises, and taxation, and all that sort of thing, that it might.

Q. To look to see that as many of their friends as possible were elected to the Legislature, and as many of their enemies as possible stayed at home, was not that true, Mr. Cole? A. Well, I should presume it would have some direct bearing upon the bills which might affect them, etc., that is, those that would be adverse to the high taxation and all that sort of thing.

Q. To accelerate the bills that would be of interest or beneficial to the members of the association, and to quiet the bills that would be inimical to the interests of the association, is not that correct? A. Why, politically, to help the railroads along; yes, in their ordinary operations.

Q. Well, this was quite an extraordinary operation, wasn't it? A. Well, from some of the bills that were up, I think it might have been.

Q. If they had not used this method of suppressing them you think they would have suffered from them, do you? A. Why, I think that many of the bills, both the railroad companies and the people would have suffered from them.

Q. Let us take up the bills you have in mind. Give me the bills that you have in mind so far as you can recall. A. Why, I cannot recall anything at this time. That was six or seven years ago.

Q. Cannot you give us one? A. No, sir, I cannot.

Q. These were strike bills, I presume, from the standpoint of the Railroad Association? A. Why, not necessarily. I think a great many of the bills were brought in by members that did not know what the direct operations of railroads were, and perfectly innocent. Yet, if the railroad companies did not have any hearing in the matter, these bills would have been put through and a great many troubles brought about.

Q. Did they have to raise large amounts by assessment to have a hearing? A. We did not raise anything during my time.

Q. Prior to that time I am discussing, that you learned from officers of the organization. A. Prior to my time I did not know anything about it only by hearsay.

Q. Hearsay from members of the organization or officers, hearsay from Mr. Rogers? A. Why, my memory is better on what he said, probably, than anybody else.

Q. Did Mr. Rogers say anything to you that indicated that in order to have a hearing somebody's organs of hearing had to be accentuated? A. No, sir.

Q. Then why did you say, to have a hearing, you had to have this assessment then? A. I did not say the hearing was for the assessment then. But I also say we had during our administra-

tion notice of bills that were coming up, in order that we might have a hearing on them.

Q. Was this association Republican or Democratic? A. It didn't lean either way.

Q. It didn't have a vote? A. No, sir, we had members with both.

Q. I presume you contributed to both political organizations? A. I don't know what he did contribute to.

Q. Did he ever say anything about that? A. No, sir.

Q. Well, you contributed to political organizations for what purpose? A. Well, I could not tell you that.

Q. Did he ever say for what purpose? A. No, sir.

Q. Did he ever say that it was to have friends in the Senate and in the Assembly and in the Committee on Railroads in the Senate and in the Assembly? A. I did not discuss the matter with him.

Q. Never said anything in regard to it? A. No, sir, not on that.

Q. Now in this letter of June 20, 1903, to Mr. Robinson, you say, "I further note what you say in regard to the difference of two thousand dollars, and will hold the matter in abeyance until I see you and have instructions as to what disposition to make of this amount." To what do you refer? A. Why, I found that—I think that was probably about October 7, or shortly after, when I was made regularly the treasurer of the company, that when he made his annual report he reported that there was \$3,971.41 in the treasury, that upon examination that it was short a certain amount, and a part of it was that \$2,000 which I called for.

Q. Now which fund was short, the published fund of dues, or the other fund made up of assessments? A. Why, my fund was short of the dues.

Q. Dues? A. Yes, sir.

Q. And did you indicate that you thought that there had been a withdrawal from the dues fund to make up deficiencies in the assessment fund? A. Yes, sir.

Q. And that is what that referred to, is it? A. Yes, sir.

Q. Well now, I note that on June 25, 1903, five days after

you became treasurer, you wrote the Morton Trust Company, stating, "I have sent you by United States Express checks amounting to \$3,941.42, which please place to the credit of the State Railroad Association. I have also drawn a New York draft, at the request of the President of the Association, in favor of Ellingwood & Cunningham, for \$2,500." Now where did the \$3,941.42 come from? A. Why, my memory is that that was the checks, etc., which Mr. Robinson turned over to me at the time, that is, when I was elected. He sent some checks, and then they continued to pay some of the dues to him.

Q. Did they represent the assessment fund or the dues fund? A. To tell you the truth if you look through there, you will find I got mixed up on that myself; I did not know which was which.

Q. What did you find out finally? A. I believe I was elected treasurer, and then they sent Mr.—regular treasurer—and then they sent Mr. Beardsley down to New York to go over all the accounts, to separate the two, and not until that time was I able to find out just where they stood.

Q. Why did they have the two funds? A. Well, I cannot tell you.

Q. Well, there were two funds kept during your time as treasurer? A. No, sir, not after I was regular treasurer; and if you will notice, at the annual meeting, October 7th, the report was given by Mr. Robinson, not by me; at that time I was there tentatively to take care of the fund, and I did not pay attention to any other accounts.

Q. Did Mr. Rogers or Mr. Robinson, or any other officer of the company ever tell you why they had the two funds? A. As I say, I understood it was for political purposes.

Q. Why two funds? A. Because it was two accounts, really.

Q. Why two accounts? Now, if they were doing a straight legitimate business, why didn't they have their regular fund, and draw on it for the purposes of the organization which were legitimate? A. Now, that I could not tell you.

Q. Wait a moment; you can't tell me. Did any officer of the company ever tell you why? A. No, sir.

Q. He was president of the company along after this time on the 20th of June, 1903? A. Mr. Rogers?

Q. Mr. Rogers, he was president at that time? A. Yes, sir.

Q. You sent \$2,500 then, to Ellingwood & Cunningham? A. Yes, sir.

Q. What for? A. Why, because the president had told me that during the interim he would take care of the distribution of funds.

Q. Rogers had? A. Mr. Rogers, yes, sir.

Q. What fund? A. The assessment fund.

Q. Rogers would take care of the assessment fund? A. Yes, sir.

Q. He would tell you what to draw and where to send it? A. Yes, sir.

Q. The other fund you to take care of? A. Yes, sir.

Q. Did he say why he would take care of one fund, and you, the treasurer, would take care of the other fund? A. Well, one of the principal things was I did not care to go in as treasurer at that time, and he told me that I would not have any particular duties because he would look after it until the regular election, and then they would like to have me go in as treasurer of the company, or the association.

Q. Why didn't you care to go in? A. I had twelve or thirteen companies that I was looking after at that time, and I could not attend to the detail of the work.

Q. Didn't you tell him you did not want to go in as treasurer of the company and have anything to do with this special fund, this assessment fund, and didn't he say: "All right, Cole, I will take care of the assessment fund until the regular election, you will only look after the regular expenditures?" A. Well, as a matter of fact, I did not care to have anything to do with the assessment fund.

Q. Then that was the reason you did not want to be treasurer, wasn't it? A. Well, the principal reason of it was many duties.

Q. This was a subordinate reason? A. That was part of the reason, yes, sir.

Q. And you told him so, didn't you? A. I believe I did.

Q. And he said: "I will take care of that fund?" A. Yes, sir.

Q. "I will look after all this legislative end of it, and you will

look after the annual banquet and the essays —— ?” A. He did not tell me, the legislative end of it; he said he would look after the assessment fund, and see that it was properly kept.

Q. Now, Mr. Cole, just search your recollection, if you will, and tell me why it was that you did not want to look after the assessment fund? A. Why, principally, I had never been in politics, and did not know probably how the money should be spent, or what was to be done with it. I had not taken it up on the initial inception, and knew nothing of it.

Q. Wasn't it because you felt that that fund was not being used for the legitimate purposes of the Street Railway Association of the State of New York? A. It was because it did not come under such work as I knew how to handle.

Q. Oh, then, you had not any moral objection to taking charge of it; it was simply a distrust of your ability? A. I have a moral objection to taking any fund I don't know all about.

Q. I want to know at that time did you have any moral compunctions against having anything to do with that fund, or was it because you mistrusted your ability to properly handle it? A. I did not care to take a fund I did not know all the details of, that I was going to handle, and what was going to be done.

Q. Were there any details Rogers would not tell you about it? A. I did not ask him; he merely said he would take the whole thing off my hands.

Q. How did you know you could not handle it? A. I knew there was such a fund, and I did not care to bother with it.

Q. Was there anything in the by-laws or the constitution as referred to any such operations as are referred to by this fund? A. No, sir.

Q. Then it was something entirely outside of which the association was formed for, was it not? A. I could hardly answer — yes, for the purpose for which it was formed under its by-laws.

Q. It was a fund that was being used for the purpose of gaining political advantage by the street railways of the State of New York, and when they asked you to handle it you said you would not handle it, and Rogers said “I will handle it.” Now, frankly, isn't that so? A. Rogers said he would look out for it.

Q. Didn't you say you would not handle it, and he said “I will handle it?” A. I did say I did not care to handle that fund.

Q. If you had said that awhile ago we would have made a lot of progress. Now, I am coming down to September 27th, 1903. I show you a letter written to Robinson by you, saying: "Your favor of the 26th instant received, and under separate cover, I enclose the books as you suggest, and would say the checks which I have received up to date are Johnstown, Gloversville and Fonda, \$98.14. Ogdenburg Street Railway Company, \$47.94. Hornellsville Street Railway Company, \$26.22. Binghamton Street Railway Company, \$405.26. International Railway Company of Buffalo, \$3,042.16. Elmira Water, Light and Railway Company, \$321.72." Those were assessments, were they not? A. No, I think they were dues.

Q. Were the dues of the International Railway Company of Buffalo, \$3,042.16? You recall, of course, your by-laws fix the maximum of dues, even to the largest companies, at \$600? They provide all members whose annual gross receipts are one million dollars or over shall pay \$600, do they not? A. Yes, sir.

Q. Do you think that you were pressing pretty hard on the International — do you think the \$3,042.16 were dues? A. I think part of that was an assessment, and part, dues, and that is where I got mixed up on my account.

Q. Wasn't it, as a matter of fact, all assessment? A. I do not think that that was, no, sir; these were the percentages and so forth. I think that those were dues.

Q. You say this money was deposited in the Morton Trust Company by you, from which they deduct ninety cents, making a total deposit of \$3,041.26. Then you go on to say: "On July 10th, there was deposited from Johnstown, Gloversville and Fonda Railway company, \$205.28; International Railway Company of Buffalo, \$3,700." Here is \$3,042.16 on September 7th, and on the 10th of the previous July, only three months previous, you have gotten \$3,700. "Ithaca Street Railway Company, \$159.26. Buffalo, Gardenville & Ebenezer Railway, \$110. Buffalo & Syracuse Railway, \$108.74." This was deposited in the Morton Trust Company. Now, please tell me whether that assessment made in July on the International, \$3,700, was an assessment or dues? A. I rather think it was an assessment.

Q. Now, Mr. Cole, let us stop thinking and imagining; let us

be frank. Here is your letter written a short time after you were made treasurer, in which you stated you had received from the International — A. That was before I was actually made treasurer.

Q. It was after you had been elected and these books turned over to you. Please see when you were acting treasurer — you had been elected by the executive committee at that time. Now, to say nothing about the other companies, you received \$3,700 from the International in July, \$3,042 in September. Do you know what those assessments were made for? A. No, sir, unless the regular assessment.

Q. Do you know? A. The regular assessments — no, I do not know.

Q. Did you ever know? A. No, sir.

Q. Did Mr. Rogers ever say anything to you about them? A. Nothing more than I have already stated.

Q. What did he say that you have already stated, about this assessment? A. There was nothing about this assessment; it was of the assessments in general.

Q. Did Robinson ever say anything to you about them? A. No, sir.

Q. Not a word? A. No, sir; I never talked with Robinson about them.

Q. Now, of course, you will note that that was 1903, when there was no State campaign; did he ever state what the money was going to be used for, political necessities that the railway company felt that they must take care of? A. No, sir.

Q. Did not state? A. No, sir.

Q. Now, continuing, you say: "July 22nd, ——" you will recall you deposited the \$3,700 from the International, and these other amounts from these other companies. By the way, how were these assessments apportioned? A. I don't know.

Q. Who did it? A. That was done by the old administration. Mr. Robinson and Mr. Rogers.

Q. Mr. Robinson and Mr. Rogers? A. Yes, sir.

Q. They were the old administration? A. Yes, sir.

Q. Now, continuing, recalling to your mind, as I said, that you received the \$3,700 from the International on July 10th, and the

\$3,042 in September, you say: "On July 22nd, I commenced deposits with the bank with which I am doing business, and deposited remittances from the Metropolitan Street Railway, account of Third Avenue Railway Company, \$8,000; New York and Stamford Railway Company, \$202.56; Schenectady Railroad Company, \$584.25; Rochester Street Railroad Company, \$400; Orange County Traction Company, \$25;" were those assessments or dues? A. Part of them were assessments, and part of them were dues, I think.

Q. What do you think about the \$8,000 from the Metropolitan? Was that assessments or dues? You remember, under your by-laws, it reads, all members whose annual gross receipts are one million or over shall pay \$600? A. It was an assessment.

Q. Why were these assessments made, do you recall? A. I don't know; I had nothing to do with them.

Q. Did anybody ever tell you why they were made? A. No, sir.

Q. For what purposes they were made? A. No, sir.

Q. There being no State campaign in 1903, did you ever inquire of the old management, Mr. Rogers and Robinson, why they were raising these large sums of money? A. No, sir.

Q. Now, just look over and see if my computation is correct, and if so, it would appear that during July and September, 1903, the assessments amounted to \$17,396.51? A. You take the whole thing?

Q. Yes. Your answer is that \$17,287.37 was probably assessments? A. I believe it was.

Q. The other amounts, aggregating \$109.14, were dues? A. Yes, sir.

Q. Now, continuing in this letter, you say: "The account in New York is credited with transfer of June 25th, \$2,500." To whom was that sent? A. It was all sent under the instructions of Mr. Rogers, the president.

Q. To whom? A. Either Mr. Rogers or his agent, Mr. Hackley, I could not say which.

Q. Mr. Hackley? A. Yes.

Q. That was the agent of Mr. Rogers, wasn't it? He was the

agent of Mr. Rogers, wasn't he? A. He was, he so appointed him, yes, sir.

Q. Appointed him his agent? A. Yes, sir.

Q. Mr. Hackley was A. S. Hackley, who was a clerk in the office of Ellingwood & Cunningham? A. I believe he was, yes, sir.

Q. What did Mr. Rogers say to you about Hackley? A. He did not say anything at all; he said he was away a great deal, and send it to Mr. Hackley; Hackley, while he was out of town.

Q. That is, in Rogers' absence Hackley would act for him? A. Yes, sir.

Q. You did so? A. I don't know.

Q. You followed Mr. Rogers' instructions? A. I followed Mr. Rogers' instructions.

Q. You think you sent this \$2,500 to Mr. Hackley? A. Either Mr. Hackley or Mr. Rogers, I am not sure which.

Q. July 10th, \$7,500. To whom did you send that? A. That was the same, either to Mr. Rogers or to Mr. Hackley; I think Mr. Hackley.

Q. I understood you to say that you did not know the circumstances under which these assessments were made; is that correct? A. That is correct; yes, sir.

Q. I find here a letter, "Elmira, N. Y., July 22, 1903. Schenectady Railway Company, Schenectady, New York. Gentlemen: Enclosed find receipted voucher in payment of special assessment against the Schenectady Railway Company for \$584.25. Yours truly, Street Railway Association of New York State, W. W. Cole." Do you recall the circumstances under which this special assessment was made in July? A. That was all made outside of my jurisdiction, and then it was given to me and afterwards sent under the instructions.

Q. What was the occasion for the special assessment? A. That was the same thing, that assessment fund which Mr. Rogers had there.

Q. Did you have a regular assessment and then a special assessment? A. They did at that time.

Q. A regular annual assessment? A. There was what they called the dues fund and the assessment fund.

Q. You speak of a special assessment. Do you distinguish that from a regular assessment? A. The regular assessment was the dues fund.

Q. Now, on July 22, 1903, you wrote Mr. Robinson: "Your favor of the 21st instant, enclosing check and voucher for \$8,000 in part payment of assessment of dues, received; enclosed find receipted voucher." What was the assessment on the Metropolitan, \$8,000, what was the full assessment for? A. I don't know. I had nothing to do with making that assessment.

Q. You must have known at the time, or you would not have receipted for part of it? A. All I got was whatever the check was sent to me at the time.

Q. I know, but you state, "enclosing check and voucher for \$8,000 in part payment." You must have known what the whole amount was at that time or you would not have stated that this was only in part payment? A. I did not keep track of that fund at all; Mr. Robinson and Mr. Rogers kept the assessment fund.

Q. That is what I understood you to say, Mr. Cole, when I started this examination this morning, but I find from this correspondence that you were keeping a very close and very accurate track of this fund; you were receiving the money, you were receipting for it; you were telling Mr. Robinson in what way you deposited it. Don't you think that perhaps you are mistaken, and that you really did take charge of this fund? A. No; I did not, and it caused me trouble at the end of it, too.

Q. Well, now, the part of it that you did not keep track of perhaps was the final deposit of it in the hands of the person who received it, but so far as the collection of it went, and the forwarding of it to Rogers or to Hackley, you did take charge? A. As any collections came in for moneys in the assessment fund and dues fund, as everything came in, I wasn't aware which was which, and we got them both together, and then we had a final accounting along about October 22nd. I was made full secretary and treasurer on October 7th, and after that called for a full accounting and had it.

Q. Whenever these moneys came in, this assessment fund, you forwarded them to whoever Mr. Rogers instructed? A. I deposited the check and gave notice to Mr. Robinson of deposits.

Q. I notice a letter to Mr. Rogers, dated July 22nd, in which you say:

“ My Dear Rogers:

I have to-day received checks amounting to \$8,202.56. I have taken the liberty of depositing these in the bank at Elmira, as it will facilitate matters in forwarding you check. I think it would be much better in every way if I made the entire deposits at Elmira, as I could then on a moment's notice send you check, and keep much better track of the accounts than I could at other points.” Do you think that would indicate that you were taking charge of this fund? A. It would indicate that I was trying to straighten it out and wanted to get these accounts where I could keep track of them.

Q. But you say instead of forwarding to him you are going to deposit in Elmira, and then you could send him check on a moment's notice? A. As he calls for in his agreement that he would look after the distribution of the funds.

Q. Then, so far as the collection of these assessments, their deposit in the bank, and holding them on the order of Mr. Rogers, you did take charge of the funds? A. I received these deposits; yes, sir.

Q. I note on July 22nd, a letter from you to Ellingwood & Cunningham, as follows:

“ GENTLEMEN:

Please find a check for \$5,000, which please credit to the account of the Street Railway Association and return receipt for the same.”

Why was that forwarded? A. For Mr. Rogers' instructions.

Q. Do you know what purpose it was for? A. No, sir; I do not.

Q. Did he ever state to you? A. No, sir.

Q. Now, I also note two days later, July 24th, a letter as follows:

“ MR. A. S. HACKLEY,

Care of Ellingwood & Cunningham, N. Y. City:

DEAR SIR:

I enclose draft in your favor for \$10,000, for which please send me a receipt.”

Under whose instruction was that sent? A. Mr. Rogers.

Chairman MERRITT: What year was that?

Judge BRUCE: 1903.

Q. Did Mr. Rogers state for what purpose these large items were being sent to Ellingwood & Cunningham? A. No, sir.

Q. Did it ever occur to you to inquire? A. No, sir, because I didn't consider that I had anything to do with that.

Q. The old management, that is, Rogers and Robinson, were taking care of that? A. Yes, sir.

Q. Now, from the letters I have read you, it would appear that from June 25th to July 24th — that lacks one day of a month — that you had forwarded \$25,000 to Ellingwood & Cunningham, in a year when there was no State campaign, and in the months of June and July. Have you any explanation of that? A. No, sir, I have not.

Q. Simply in obedience to the old management, Rogers and Robinson? A. Why, in obedience to the agreement when I went in that he would look after all distributions of that fund.

Q. That was a pretty large amount, wasn't it, \$25,000? A. A pretty good amount, yes, sir.

Q. Wasn't your curiosity aroused to a sufficient extent that you made any inquiries of Mr. Rogers as to why these large assessments were being made and what was being done with the money? A. Why not materially.

Q. Well, slightly? A. Why, yes.

Q. What did he say? A. Oh, I didn't ask him about it at the time, no, sir.

Q. Did any of the members of the association, if I may use a slang expression, kick on the assessments? A. Why, yes, I think they did.

Q. Did they think they were coming pretty fast and pretty heavy for a non-political year? A. I think they did, yes, sir.

Q. And in the middle of the summer? A. Yes, sir, they did.

Q. What did you tell them? A. I don't remember, I probably referred them to the president.

Q. That is to the old management, Rogers and Robinson? A. yes, sir.

Q. Do you know whether any of them made any inquiries of the old management? A. I couldn't say that.

Q. Did they seem satisfied when you referred them to the old management? A. Well, I don't know.

Q. How long is it since you have seen Mr. Robinson? A. Oh, it is several years since I have seen him.

Q. You don't know where he is now, do you? A. No, sir, I have not seen him since the last account that I called in to get.

Q. Have you communicated with him recently? A. No, sir, I have not.

Q. We have been endeavoring to communicate with him by a subpoena, but have been unable to do so yet, and I thought perhaps you might give me some information as to where we might reach him? A. I have not met him since I was in the association or heard from him.

Q. Now, continuing with this correspondence, I note a letter, July 29th, to the Morton Trust Company:

"Yours of the 28th inst. received, and enclosed please find check for \$586.75, to cover deficit in account."

Was that in the regular account of the association, what I might term the legitimate account? A. Who is that from, please?

Q. You are writing to the Morton Trust Company, telling them that you forward check for \$586.75, to cover deficit in account. A. No, I think not.

Q. What was that deficit, in what account was it? A. I think that must have come from one of the drafts made on them, an over-draft.

Q. You overdrew your account there, did you not? A. Yes, sir.

Q. Was that an overdraft in the regular disbursements of the association, or in these so-called political disbursements? A. Why, it was on the draft sent to Mr. Rogers, I think.

Q. Now, you wrote to Mr. Robinson on September 12th, and you say "My dear Robinson: Yours of the 10th inst. received. I note what you say about the statement of accounts, and would inquire if you think it necessary for me to present the report at the next meeting, or if you would make the treasurer's report, as up to date I have done very little in a business way with the affairs of the association. I think possibly it would be better for you to present the report, specially as it is not known that I am treasurer." Having forwarded during that month \$25,000, collected

it in and forwarded it, don't you think that you had done very well in a business way with the affairs of the association? A. Well, I had done very little.

Q. Don't you think that as a temporary treasurer you had done very well? A. I had followed the instructions of the president as he originally told me.

Q. The entire dues of the association for a year were only about six or seven thousand dollars, and you had succeeded in collecting in special assessments aggregating over \$25,000 in a month. Now, don't you think you had done considerable? A. I hadn't succeeded in collecting in over \$25,000. I think those notices were sent out before my time.

Q. The notices may have been sent out, but the receipts came to you, did they not? A. Part of them did and part did not.

Q. Where did the others go? A. To Mr. Robinson.

Q. \$25,000 came to you? A. Yes, sir.

Q. How much did Mr. Robinson get besides that? A. I haven't the slightest idea.

Q. He got some, did he? A. I am not sure, he may have sent them to me afterwards.

Q. He doesn't seem to have sent any during that period — do you think he retained them? A. No, sir.

Q. What do you think the whole assessment amounted to for that month? A. I haven't the slightest idea.

Q. Some came to you and some went to Robinson? A. They did, and I forget whether he deposited direct in the Morton Trust Company or sent them to me.

Q. You say, "Specially as it is not known that I am treasurer." What did you mean by that? A. I was elected merely by the Executive Committee, and the notices had not been sent out, and they continued to send a great deal of the data to Mr. Robinson and part of it to me.

Q. Mr. Robinson had resigned? A. Yes, sir.

Q. And wasn't his resignation accepted? A. It was.

Q. And wasn't it generally known to the members of the Association? A. No, because he still continued as secretary, and sent his letters out as secretary, and there was confusion about it.

Q. Then part of it went to you and part of it to Robinson?
A. It did.

Q. Do you think possibly Robinson got as much as you did?
A. Why, no, sir. He deposited whatever he got in the Morton Trust Company. At least I presume he did.

Q. In this letter which I read to you a few moments ago, the letter of September 27th, you say to Mr. Robinson, "Your favor of the 26th inst. received, and under separate cover I enclose the books as you suggest." What books were they? A. They were the same books which he originally turned over to me.

Q. Why did you send them back? A. Because I had requested that he make the treasurer's report, that as I had had so little to do with the Association, that at the annual meeting of October 7th he make the report himself.

Q. I think you are too modest. I think you had a whole lot to do with the affairs of the Association, that you had been exceedingly diligent. I think that you received \$25,000 in a day less than a month and forwarded it, you had been exceedingly diligent. I think you are altogether too modest in that. Now, continuing you recall that the last letter, in which you reported the \$8,000 from the Metropolitan and \$6,000 from the International, etc., was on September 27th. Now then, on October 1st, that would be about four days later, October 1st, 1903, you are writing to Mr. Rogers and you say: "Dear Sir: In pursuance of our conversation over the telephone, would say that up to date I sent drafts to the New York end, the first draft on June 28th, for \$2,500; July 10th, for \$7,500; July 24th, for \$8,000; on July 10th, and a draft on the Morton Trust Company which made an overdraft of \$5,67. Check was then forwarded to them to make up for the overdraft. We now have in funds \$625.06, for which I enclose New York draft." Now, what was this conversation over the telephone that you had with Mr. Rogers? You say, "In pursuance of our conversation over the telephone." You had forwarded this \$18,000 and then you sent every cent there was in the treasury to him on this date, the date of this letter. What was that conversation over the telephone? A. Looking forward to the annual meeting of October 7th, to get up the accounts, etc., and that it was stated that that I would be elected secretary and treasurer, and would mal

the annual accounting from the time I started in, opening up a new set of books, etc., and it was in pursuance of the new work and accounting for the old.

Q. Then you showed him you had turned over every cent there was in the treasury pursuant to his instructions? A. Yes, sir.

Q. Now, you said to him there that you had sent \$2,500 on June 28th, \$7,500 on July 10th, and \$8,000 on July 24th. How about the \$5,000 and the \$10,000 that you had sent, the \$5,000 on July 22nd and the \$10,000 on July 24th. How about this \$15,000? Why didn't you mention that to Mr. Rogers? A. Why, I can't say. There was a full accounting of all the funds. .

Q. Will you think for a moment to see whether there was any reason why you should not have mentioned to him when you were giving all these items, one of \$5,000 and one of \$10,000? A. I think that possibly was the money that Mr. Robinson had, that the actual money that passed through my hands was the amount I have stated.

Q. For the purpose of refreshing your memory I show you a letter as follows :

“ ELMIRA, NEW YORK, *July 24, 1903.*

A. S. HACKLEY,

% Ellingwood & Cunningham,

41 & 43 Wall Street, New York City: .

DEAR SIR:

I enclose draft in your favor for \$10,000, for which please send me receipt.

Yours truly,

W. W. COLE,

Treasurer.”

Does that refresh your recollection as to whether or not this \$10,000 passed through your hands? A. Yes, sir, it did.

Q. Now, your recollection having been refreshed to the effect that this did pass through your hands, can you tell me why the \$10,000 and the \$5,000 was omitted from the statement to Rogers sent October 1st, 1903? A. No, I haven't at this time any idea why it was.

Q. Now, after our discussion of the transaction, coming back

now to my question, can you tell me what was the conversation over the telephone? You say, "In pursuance of our conversation over the telephone," I have done so and so. A. Why, I think undoubtedly he called for an accounting at the end of the year as to the moneys I had in my possession, etc., as president of the association.

Q. That is your only recollection, is it? A. That is the only recollection I have at this time, yes, sir.

Q. Is that a matter of presumption or imaginings, or a matter of recollection? A. Why, largely presumption.

Q. Don't let us deal in presumptions or imaginings. I find that in these examinations there is a tendency on the part of witnesses to deal in presumptions and to say "I suppose," "I presume," "I possibly think." Now, in order to facilitate the examination, let us not deal in presumptions, but in facts. A. Seven years ago is a pretty long stretch for a man's memory, especially as I have had a great many other companies, and my interests have been diverted since then.

Q. Yes, I know, but if you cannot recollect, and I cannot aid in refreshing your recollection, let us state so, and not deal in presumptions, as it is of no importance to this Committee what a man presumes. The letter I have just read to you was on the 1st of October, 1903, and on the 9th you wrote as follows:

"G. TRACY ROGERS,
Binghamton, New York.

MY DEAR ROGERS:

I have just received a letter from Mr. Connette" — who was Mr. Connette? A. He was at that time general manager of the Syracuse Street Railroad.

Q. "I have just received a letter from Mr. Connette, in which he decidedly states that he will not accept the office of president of the Association. I am inclined to think that Mr. Connette is wise in taking the stand that he does. With the Executive Committee all pulling out and the election of officers from among men who have never before been on the Board, it would seem that this, together with the entire change of policy was 'trying it out on

the dog up the State.' Personally I am considering where the Association is at, and whether it is a compliment to a man's intelligence or not to be elected as an officer of the Association this year. I shall consider the thing a little further, and if I find that it is a case of 'jumping an onerous burden upon the other fellow's shoulder,' I shall also send in my resignation. Plainly I don't like the looks of things.

Yours truly,

W. W. COLE."

Now, doesn't that indicate, see if I do not refresh your recollection in that respect, doesn't that indicate that the old management was pulling out, and that you doubted whether or not it would be a compliment to be elected that year treasurer after all — isn't that so? A. That is true.

Q. Then you mistrusted this entire change of policy. What was the entire change of policy? A. Why, from that period there would be no more assessments.

Q. Nothing doing politically after that — was that it? A. There would be no more assessment fund, there would be just the dues, and there was, I think, some change in the general operation of the association.

Q. But that is the main change to which you refer, doubtless. Now, you said that when you went in, mistrusting your ability to properly handle this fund, and perhaps your desire to do so, that you had turned the whole matter over to Mr. Rogers, that is the political end of it — is that right? A. That assessment fund was turned over to Mr. Rogers.

Q. Now, why is it, that in this letter, after your brief experience for a few months as acting treasurer, you mistrust the efficacy of this entire change of policy? Weren't you in favor of it? A. I was not in favor of all the old officers and everybody getting out and an entire change in the board. It was a question whether how to handle the association.

Q. Didn't you think it was a good idea for the old management to get out? Why, you were not going to handle the assessment fund. Now, why this change of heart? Why, on October 9th, just prior to the time when you would be publicly elected by all

the members of the association, why do you doubt the wisdom or the efficacy of this entire change of policy, and of the old management getting out? A. I think that is a point with any company where you are going to have an entire change in the management. It is a question of what the new management is going to be.

Q. Mr. Cole, frankly now, had not you seen enough of the workings of this association to lead you to thank God if they would all get out and there would be a change of policy? A. No. In many things they had done their work very well.

Q. I think so, too, but those were the kind of things that you did not want to have anything to do with, and don't you think that those were the kind of things that were not only illegal, but absolutely disreputable, collecting in one month \$25,000 for political purposes in a non-political year? Now, sir, as a man and a citizen, have not you learned enough about this association to feel that it would be a thing for which you could thank God if the old management would get out and there was an entire change of policy? A. Why, I think in all organizations, where they run as long as that one has, that there comes a time when there can be a change of policy that will benefit it.

Q. Well, did not you think that that time had come rightly in this State? A. Why, in some things, yes.

Q. Then what had come over your dreams or your purposes, that you write this letter deprecating everybody getting out and an entire change of policy? A. I wanted to know who was going to become members of that association and who was going to continue, or whether the association was disrupted and there would be no further association.

Q. Well, if the thing was going on as it had been going on, would not you think it was a grand thing if it was disrupted and annihilated? A. There had been some kick on the assessments, and it would be a good thing if they were done away with.

Q. Well, wasn't it the fact that they were onerous and abominable, the object for which they were raised? A. That I couldn't say.

Q. You know they were raised for political purposes? A. From hearsay, yes.

Q. Hearsay from whom? A. From Mr. Rogers.

Q. Well, though, you knew that to be a fact. Your president told you so, did he not? A. He so stated; yes, sir.

Q. But you were so depressed from the fact that the old management was going to get out — I suppose that was Robinson and Rogers — and that there was going to be an entire change of policy, that you wind up your letter that you think of sending in your resignation. You were going out with the old management, were you? A. Why, I was going out — there was an executive committee and others that were all going out.

Q. That is, the old management was going out? A. Yes, sir.

Q. And you thought you would go out with them, you say that? A. Why, I don't think I care to assume the burdens of the future.

Q. There would not be as many burdens as before if they had an entire change of policy, these harmless banquets, assessments would not be much of a burden? A. I found there was considerable of a burden there after I continued.

Q. Well, were you elected treasurer? A. I was; yes, sir.

Q. You did not resign then? A. I did not; no, sir.

Q. Who got out? A. Why, I was continued. I was already treasurer.

Q. You had been elected treasurer by the executive committee. I suppose you were at the annual meeting elected treasurer by the members? A. By the association itself.

Q. Now, who got out? A. Why, Robinson got out as secretary, and I was made secretary and treasurer both.

Q. Who else got out? A. Why, Mr. Rogers was superseded, and I think there was a change. I would have to look over the books, but I think there was a change in the entire board.

Q. There is nothing in your substituting the word superseded for my word got out, referring to Rogers, is there? A. The same thing.

Q. When was the annual meeting held? A. October 7th.

Q. When, what year? A. 1903.

Q. Where? A. At Syracuse.

Q. I note a letter here from you, October 10th, to one of the old management, Mr. Henry A. Robinson. He had resigned at that time, had not he? A. Yes, sir, he was out.

Q. You address him, "Dear Sir," on this occasion. You say,

"I have telegram and letter from Mr. E. J. Connette, advising me to forward him an immediate check for \$500." You continue: "As all the money that I have received has been transferred to the special account at New York,"—what is that? A. That is the assessment fund.

Q. "I am unable to give check at this time and have written Mr. Rogers to have check made from the special account, which I presume can be done." The regular fund was existing, was it? A. Yes, sir.

Q. And you wanted a draft made on the special account, the assessment fund? A. Yes, sir, on the assessment fund.

Q. And Rogers was the man to do this, was he? A. Why, yes, he was the one.

Q. Rogers and Robinson had gotten out at this time, hadn't they? Did they still keep control of the special account, assessment fund? A. Well, Mr. Robinson's report at the annual meeting showed, let's see —

Q. Let us not go into that. A. Well, that is where it came from. He owed us that amount of money.

Q. But, Mr. Cole, that is not the object of my question. After the old management, Rogers and Robinson, got out, did they still retain control of the assessment fund? Now reflect a moment. A. Why, I think that assessment fund, as far as my knowledge went, had been expended; put out.

Q. Now just think for a moment and I will read this again. See if this refreshes your recollection. You remember Connette wanted \$500? A. Yes, sir.

Q. "As all the money that I have received has been transferred to the special account at New York, I am unable to give check at this time and have written Mr. Rogers to have check made from the special account, which I presume can be done." There, therefore, was a special account at that time in existence? A. Yes, sir.

Q. That was the assessment fund? A. That was the assessment fund.

Q. After Robinson and Rogers, the old management, got out did they still retain control of the special account, the assessment fund? A. Why, if there was any left there in that fund they did; yes, sir.

Q. Although they were no longer officers of the association? A. Well, it had been, the transfer of it had been made to Rogers while he was an officer.

Q. That don't answer my question. A. Well, I don't know of any assessment fund that was continued after I went in as treasurer.

Q. You don't know. Now, I will read again, "As all the money that I have received has been transferred to the special account at New York,"— There, therefore, was an account? A. Yes, sir.

Q. "I am unable to give check at this time and have written Mr. Rogers to have check made from the special account which I presume can be done." Now, from that would not you say that there was a special account at that time? A. I presume there was something left over.

Q. You say they retained control of that after they went out? A. Whatever there was.

Q. They were then no longer officers of the association? A. No, sir.

Q. Your letter continues: "I note from Mr. Connette's letter that he absolutely refuses to accept the office of President and I am afraid there is going to be further dissatisfaction upon the new board as there seems to be an undercurrent of feeling that such an entire change of policy and of the entire board is such an experiment that the new board of officers are assuming duties which they are not accustomed to carry and maybe unable to fulfill. I presume that in the future, all receipts will be deposited at one bank and that no payments will be made, except through the regular voucher form.

"I think under the present conditions there should be a finance committee who would state their approval upon all payments of money from the Treasury before the Treasurer should sign checks: I would be greatly obliged to you for your suggestion in this matter."

Now this new management evidently were going to do business in a business way; they were going to have all the moneys deposited in one fund; they were going to have a regular system of vouchers; they were going to have the approval of the finance

committee. Why were you apprehensive that that would not work? A. That was the very thing I suggested myself. I put that up.

Q. Why did you in your previous letter and also in this letter say, "There seems to be an undercurrent of feeling that such an entire change of policy" won't work? A. Why, I was not at all afraid that the policy would not work. The policy I doubted was of putting a great many old men, who had been continued as officers of this association for a great many years, to drop away from it, which might have some effect on the association and its further continuance, etc.

Q. Prior to that there had been no vouchers made out in regular form or any other form? A. Why, I had bills for everything I expended.

Q. I ask you whether or not prior to that time, in expenditures of these large amounts, there had been any vouchers made or kept? A. I don't know.

Q. Did you know of any? A. No, sir.

Q. You were the treasurer, and if there had been you ought to have had them? A. That was turned over to Mr. Rogers, that money, and I don't know.

Q. Did you get any vouchers from Rogers? A. No, sir.

Q. Did you get any vouchers for these large sums that you forwarded to New York? A. No, sir.

Q. You sent \$25,000 in a month. Did anybody send you a voucher? A. No, sir.

Q. The special account still continued, did it not? I note in your letter of October 12th, to one of the old management, Henry A. Robinson, New York, you say, "As you will note from the report which I sent you, the money was completely withdrawn from the special account in New York." So the special account continued to exist, did it not? Is that true? A. Why, I think that whatever there was; yes, sir.

Q. When were you notified of your election as secretary and treasurer? A. Why, at the regular meeting, October 7th.

Q. I find here, October 12th, a letter of yours to one of the old management, Henry A. Robinson:

"Your favor of the 9th inst. received, and I thank you for the very kind notice of election as secretary and treasurer.

Yours truly,

WILLIAM W. COLE."

Does that refresh your recollection? A. Well, that was the official notice after the election.

Q. Now on October 13th, which was subsequent to this letter which I read a few moments ago, in regard to this entire change of policy, in a letter to Mr. Rogers, October 13, 1903, another letter to Mr. Rogers, Binghamton, N. Y., in which you say: "Yours of the 12th inst. received. Would note what you say in regard to the compliment of being elected an officer of the Association." I take it that Mr. Rogers had complimented you on the fact that you had become an officer of the Street Railway Association of the State of New York? A. I think so; yes, sir.

Q. The letter continues: "I think there are several in the Board that feel differently. Having absolutely no representatives on the executive committee from the large companies of the State, would seem to me, as I have already stated, like trying the new policy on the dog, and if the new system does not work successfully it would be a case of curing it with the hair of the dog that bit you." You still had some doubts about the wisdom or efficacy of the new policy, I take it, at that time? A. Why, of an administration of all the smaller up country districts; yes, sir.

Q. I note a letter the same day to Mr. Robinson, one of the old management, in New York. You say, "I shall be in New York Thursday and Friday. Would like to meet you some time while I am in the city so as to have a more complete understanding of the affairs of the Association. I would also be obliged if you would have a complete report of affairs as they are turned over to me, stating just what balance there is supposed to be in the treasury, and also what bills are now due the company." Was there any difference between the balance in the treasury and what was supposed to be there? A. Yes, sir, in my balance —

Q. What difference was there? A. Why, I had \$85 in the treasury and Mr. Robinson's report showed \$3,714.71.

Q. You wanted to know what caused the discrepancy? A. Yes, sir.

Q. Did you find out where that money was? Was it ever made up? A. Yes, sir.

Q. How was it made up? See if I can refresh your recollection. Was it made up with an assessment? A. A part of it.

Q. A large part of it, wasn't it? A. I think \$2,000 of it, yes, sir.

Q. Made up by assessment? A. Yes, sir.

Q. That was after the new policy had gone into effect, and after you had been elected treasurer by the association, wasn't it? A. But the assessment was largely on the preceding officers, etc.—took that up and made it up.

Q. Put their hands in their pockets and made it up? A. With their companies; yes, sir.

Q. Had you ever known them to put their hands in their pockets before to make up an assessment? A. No, sir.

Q. They usually called on the companies? A. Yes, sir.

Q. Where did the other thousand come from? A. Why, I think it came from Mr. Robinson. I am not absolutely positive of that, though.

Q. Now, after Mr. Rogers ceased to be an officer of the company, did he take an active interest in the affairs of the association? A. Why, I think he took as much as any outside company.

Q. Did he take any more than the average president of a company which was a member of the association? A. No, I think not.

Q. Did he participate actively in the affairs of the association? A. Why, his representatives were there.

Q. Was he there? A. Not at all the meetings; no, sir.

Q. Who were his representatives? A. Mr. Clark, the general manager of the Binghamton Street Railway.

Q. Did you consult frequently with Mr. Rogers? A. No, sir.

Q. You did not? A. No, sir.

Q. Did not you consider it valuable to have the advice and counsel of the man who had been so long president of the association, taking such an intense interest in its affairs? A. Well, as treasurer of the association, I did not have a great deal to do with the absolute conduct of it.

Q. While you were temporary treasurer, you seemed to have

had considerable to do. Did not you want the advice and counsel of the man as experienced as Mr. Rogers had been? A. I wanted, of course, to know how the affairs of the association were conducted; yes, sir.

Q. But after that you were doing it alone, after the old management went out? A. Well, probably I found I was able to.

Q. Now, I call your attention to a letter written to Mr. Rogers on October 13, 1903: "My dear Mr. Rogers.—Yours of the 14th inst. received. I note what you say in regard to assisting me in the affairs of the Association and am greatly obliged to you for your very kind offer and consideration, and am going to take you at your word in the future and impose upon you whenever I get the opportunity." Did you? A. I don't remember anything, that I had to.

Q. Would you in case the occasion had presented itself? A. Yes, sir, I should.

Q. Then you did consider his experience and advice valuable? A. Yes, sir.

Q. Gladly availed yourself of his kind offer to give it to you? A. He had been president a great many years.

Q. That is what I said to you a few minutes ago, that you should think that the case. You seemed to doubt it. Now, when I show you the letter, you seem to agree with me? A. I think there must be some misunderstanding, if I should consider the advice of an old officer of some value in the association?

Q. Mr. Rogers had been a very active officer? A. He had.

Q. I note in your letter of October 19, you still report to Mr. Connette, vice-president and general manager of the Syracuse Rapid Transit Railway Company, "Yours of the 15th inst. received. Would say in reply that while the treasurer's report shows \$3,000 on hand, as a matter of fact, this comes from amounts due the Association which have not been paid as there are quite a number of roads which had not paid their dues," etc. This deficit still continued, did it? A. Yes, sir.

Q. And on the 21st you write him again that you desired to have a complete understanding. You say, "I had previously written Mr. Robinson for practically the same figures as in opening up the accounts for the Association, I desire to have a com-

plete understanding as to just what money is due and what actually there is on hand." That is October 21, 1903. The deficit still existed, did it? A. It did.

Q. If your honor please, I would like to make an explanation at this point, if I may, that on the original testimony given, I had become confused at that time.

Q. Will you just withdraw that for the present, and I will shortly complete your examination and give you the opportunity. Mr. Cole. I notice that in the letter dated November 14, 1903, to Mr. Connette, the president, you say: "The Brooklyn and Coney Island Road has sent in no check as yet but I believe that Mr. Robinson is taking care of that and expects to get it. The amount due from their assessment is \$2,997.95. As to the cash balance shown by the report, Mr. Beardsley has been to New York and straightened out that matter and I shall have a statement to present at the meeting Wednesday which will be exact and correct and up to date." What assessment of \$2,997.95 was there on the Brooklyn and Coney Island? A. That was one of the old assessments which I presume had not been paid up.

Q. Is this presumption or recollection? A. Why, it is recollection, and that that was to be paid over to the new organization, that is, the treasurer, as I was then, to make up for this deficit.

Q. Three thousand? A. Yes, sir.

Q. That was putting it pretty hard on the Coney Island, putting all but a few cents of the three thousand, or, it lacks \$2.05 of being all on the Coney Island. Why was it all to be levied on them? A. That came from old dues or assessments which had been under Mr. Robinson's administration, which had been assessed at that time and not paid up.

Q. You seem to use the words "dues" and "assessments" as synonymous. There was a difference? A. Yes, sir, there was the due fund and the assessment fund.

Q. Now, this was long after you had been elected treasurer of the association, long after the new policy had gone into effect, and long after the old management of Robinson had gone out. Did you still continue to collect in the old assessments? A. No, sir.

Q. Was Robinson going to collect them in? A. Why, there

was no assessments, so far as we were concerned, to collect, except to make up that \$3,714.71, that had to be made come from some point.

Q. You state here, "The amount due from their assessment" — the Brooklyn and Coney Island, is \$2,997.95, which you expected Robinson will get? A. Yes, sir.

Q. And when he got it, what was he going to do with it? A. Why, I presume, turn it over to us.

Q. Then you did continue to collect in the old assessments, did you not? A. Why, I think we did, any that was still due, that had not been collected.

Q. Did they pay it? A. I don't know that they did.

Q. Did you ever learn? A. I don't remember.

Q. Quite a large amount, important amount at that time, nearly three thousand dollars. Don't you recall whether the Coney Island paid up or not? A. I could not tell, no, sir.

Q. So that a part of the amount the old management put their hands in their pockets and made up? A. Why, there was a certain amount that the new management made up the deficit, but I don't know what the old management did do.

Q. Well now, in the letter to Mr. Connette on November 17, you say: "Replying to yours of the 16th, would say that the difference between dues and assessments is very clear in my mind." There was no doubt about that? A. Positively then, because I had had Mr. Beardsley come to New York.

Q. "It is true, however, that at first I did not understand that there was a separate account kept of the dues and assessments." To what accounts are you referring there? A. Why, to the two accounts, the due fund and assessment fund.

Q. Did you continue to keep separate accounts of dues and assessments? A. No, sir.

Q. Not after you were regularly elected treasurer? A. Nothing more than where was some assessments to make up the deficit.

Q. But those assessments you did continue? A. Well, we did not continue them after we had made up our deficit, so I started the books out according to the report made of the preceding treasurer.

Q. Now, I call your attention to the letter of November 30,

1903, to Mr. Rogers, in which you say : " Dear sir.— I have a letter from Mr. Connette in answer to my letter of the 27th in which he states as follows :

" The by-laws of the Association do not provide for any special assessments. This feature of the work as followed by our predecessors in the name of the Association was clandestine in its character, and while it met with acquiescence for a long time, still no officer of the Association had any right to transfer money from the regular fund of the Association to make up any deficit in the special assessment fund. Yours truly, Wm. Cole."

Why did you write that to Mr. Rogers? A. Why, I don't remember just what the conditions were.

Q. What had Mr. Rogers been inquiring for? A. I can't tell you.

Q. Had not he been wanting the association to contribute to make up this deficit out of its regular fund? A. I think that is probably true.

Q. What did Mr. Connette mean in his letter to you by saying, " This feature of the work as followed by our predecessors in the name of the Association was clandestine in its character "? A. Why, that they did not come under the regular by-laws.

Q. What did he mean by the word " clandestine "? A. That, I don't know.

Q. What did that convey to your mind? A. It was outside of the regular rules and regulations under which the association was conducted.

Q. Didn't it convey anything further than that? A. Why, no, it didn't.

Q. The word " clandestine," does that ordinarily convey to your mind something that is *ultra vires*, something that is outside of the affairs or ordinary duties of a corporation, or does it convey to your mind something that is secret and hidden? A. I should say the term clandestine was, under cover.

Q. That is what it would convey to my mind; that is what it doubtless conveyed to yours, did it not? A. I think at the time, we had been discussing the bills, and so forth, and I considered it had more reference to the actual conduct and the proper conduct of the affairs of the association.

Q. Were you not serving by this letter, notice upon Mr. Rogers, that old things had passed away and old methods, and that under Mr. Connette's management there was going to be no more assessment fund? A. Yes.

Q. Now, in a letter of November 30th, to Mr. Connette, you say, postscript: "Please return to me the list of unpaid assessments which I let you have, and also the statement of the special account which I let you have at our first meeting at Utica." What was that list of unpaid assessments? A. I believe that was one which was turned over by Mr. Robinson.

Q. Have you got that? A. I do not think so, no, sir.

Q. Do you know where it could be found? A. I do not, no.

Q. Do you think it was destroyed with the other records, or do you think it survived? A. I did not destroy any papers.

Q. I am not saying that you did; you testified you did not? A. Well, I did not.

Q. But Mr. Beardsley testified that the check books were destroyed, and that the other books cannot be found. I want to know whether it would be your best recollection, or your judgment, that that communication possibly survived? A. I put everything into a box that I left when I went out, and just what became of it, I don't know; whether that continued in my hands or whether I turned it over to the association, I don't know.

Judge BRUCE: Now, I will discontinue the examination of the witness. I want to continue with Mr. Cole after recess. The hour of adjournment has arrived, and I will give Mr. Cole an opportunity now to make any correction in his evidence that he may desire.

The Witness: At this time?

Judge BRUCE: Yes, answering for the Chairman.

The Witness: If your honor please, I want to state that in the first evidence given, I had not taken the time to have any records or memorandum that I might have, or any of my letters, and I stated at that time, that there was a deficit of \$10,000. I had confused the draft which I had sent to Mr. Rogers, in my memory, with the actual deficit, the actual deficit that occurred when I took over the treasuryship was \$3,714.71, and not the \$10,000 which I had previously stated.

By Chairman MERRITT :

Q. Is that all? A. Yes, sir.

By Judge BRUCE :

Q. What refreshed your recollection? A. Since going through the correspondence, and so forth.

Q. Who have you talked with about it? A. I have talked with Mr. Beardsley some.

Q. Who else? A. I have talked with Mr. Loomis Allen.

Q. Who else? A. And Mr. Pardee.

Q. He is now president of the association? A. Yes, sir.

Q. And was a member of the executive committee at the time you were elected? A. Yes, sir.

Q. And you testified that at the time you were elected, the executive committee passed a resolution directing you to forward the \$10,000 to make up the deficit, did you not? A. That was my memory of it, yes, sir.

Q. In your conversation with Mr. Pardee, who was a member of the executive committee at that time, did anything he said refresh your recollection that he was not present and did not vote on any such resolution? A. I found that all the committee ——

Q. Answer that. And then make any other statement you wish? A. Why, yes, sir, I think he did.

Q. Then, what refreshed your recollection was Mr. Pardee's statement, the present president of the association; that he did not vote for any resolution to make up a \$10,000 deficit; wasn't that it? A. That was it practically, yes, sir.

Chairman MERRITT: Committee will stand adjourned until two o'clock.

Recess until 2 P. M.

AFTER RECESS.

2 P. M.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: I find myself, Mr. Chairman, unable to complete the examination of Mr. Cole on account of our inability during recess to go over the letter book of some 500 pages which Mr. Cole handed to us this morning after the opening here, and I therefore ask leave to suspend the examination of Mr. Cole until to-morrow morning, when I will have had an opportunity to go through the book and see if there is anything further which I wish to inquire of him.

J. H. PARDEE, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Pardee? A. New York city.

Q. What is your business? A. I am operating manager for J. G. White & Company.

Q. Do you hold any other position? A. Well, I am an officer of several of the companies that J. G. White & Co. are interested in.

Q. Outside of your connection with J. G. White & Co., and companies in which they are interested, do you hold any other position? A. I am president of the Street Railway Association of the State of New York.

Q. How long have you been president? A. Since June 29th, 1910.

Q. And where is your office? A. 43 Exchange place.

Q. Who is the secretary and treasurer? A. The secretary is Mr. C. Gordon Ral, of Kingston; the treasurer is H. M. Beardsley, of Elmira.

Q. When did you first become connected with the Street Railway Association of the State of New York? A. In 1903.

Q. In what capacity? A. As a member of the executive committee.

Q. At that time what was your business? A. I was president of the Ontario Light and Traction Company.

Q. Prior to that time had you had any connection with that Association whatsoever? A. No, sir; I attended one of the meetings of the association, at its convention.

Q. Were you present at the executive committee meeting at which Mr. Cole was elected treasurer in the place of Mr. Robinson when he resigned? A. No, sir, I was not a member of the executive committee at that time.

Q. You were elected a member of the executive committee in the fall of 1903? A. Yes, sir.

Q. You were elected then, about the time when the new plan or new system was placed in vogue, were you? A. Well, I don't know exactly what you mean by that.

Q. Was there anything that came under your observation as a member of the executive committee that led you to believe that the operations of the association had been any different in former years than it was after you became connected with the executive committee? A. I was elected, I think it was either the 6th or 7th of October, at the fall convention of the association, and I did not attend the executive meetings until that winter, so at the earlier meetings during that year, I was not present at the executive committee meetings, so that I only know what the plan was that the association operated under, after I became familiar with it.

Q. Wasn't it understood, Mr. Pardee, when you and other men entered the executive committee, that methods that had been in vogue and had been used by the association, were to be abandoned, and that from that time on the association was to be strictly a business association? A. Why, I cannot say that that is true, because I was elected a member of the executive committee; I had no discussion with the men about those matters at that time.

Q. Did you have any knowledge of it? A. No, sir.

Q. Were you present at the meeting of the executive committee at which a resolution was passed, as Mr. Cole has testified, directing the payment of a deficiency of, he has stated, \$10,000 but corrected it, and said it was something over \$3,000, which had been incurred by the old management in political matters? A. No, I do not understand—I knew of that later, but not at the

time. I do not know whether there was a resolution of the executive committee, or not.

Q. But you learned later that there had been such a resolution passed, did you? A. No, sir, I did not learn of that.

Q. You said you learned of it? A. No; I said I knew there was a deficiency in the funds of the association.

Q. And did you know in what fund that deficiency occurred? A. I knew — that is, I heard later that the annual report showed a certain amount of cash on hand, and that there was not that cash on hand.

Q. Did you know that the deficiency had been occasioned by withdrawals from the regular funds of the association to meet the alleged requirements of a fund known as the assessment fund? A. No, sir, I did not know that.

Q. Had the company with which you had been identified — what did you say was the name of the company? A. The Ontario Light and Traction Company.

Q. Had they ever been assessed? A. No, sir.

Q. Had they ever paid any assessment? A. No, sir.

Q. Nothing but their regular dues? A. No, sir.

Q. They were a small company, were they not? A. Yes, sir.

Q. Now, Mr. Pardee, what records of the proceedings of the association since you became an officer of it have been kept? A. Up to the time that I was secretary of the association, elected in 1906, the fall of 1906, prior to that time I do not know what records were kept; I never examined the records.

Q. Subsequent to that time, what have been kept? A. Subsequent to that time, I have kept the minutes as secretary, and also the minutes of the executive committee.

Q. Were those minutes preserved? A. Yes, sir.

Q. Not destroyed? A. No, sir.

Q. You are now president of the association? A. Yes, sir.

Q. You stated Mr. Beardsley was treasurer? A. Yes, sir.

Q. He stated it was the custom now, as soon as the annual report had been made, to destroy all the check books; were you familiar with that procedure? A. No, sir.

Q. Do you approve of it? A. Why, that is a matter of opinion.

Q. You are president of the association; what is your opinion?
A. It depends entirely on how the records are kept; if there is a complete record of the association I don't know that the check books cuts any particular figure.

Q. Do the other companies that you are identified with destroy their check books at the end of the year, any of the others?
A. I do not know whether they do or not.

Q. Do you destroy your own? A. I have destroyed a great many of my own.

Q. At the end of the year? A. Not necessarily at the end of the year; once in a while.

Q. How long back do you destroy them? A. No particular time.

Q. Would you preserve them twelve months? A. If I thought that they would be necessary at all, I would.

Q. Well, it appeared from the examination of Mr. Beardsley that some large items of expenditure, like \$1,750 were strangely omitted from the annual report; don't you think it would be wise to preserve the check books so that the company could have a record of its expenditures of those amounts? A. If that amount did not appear in the annual report?

Q. No. A. Was not included in there?

Q. There was not any annual report published as to expenditures? A. For that year?

Q. For that year, and the check books were destroyed. A. I presented the annual report to you, Judge Bruce.

Q. For that year? A. Yes, sir.

Q. Showing the expenditures? A. Yes, sir.

Q. I asked Mr. Beardsley for it, and he looked through the annual reports and said it did not appear in the records of the expenditures. A. For what year are you speaking?

Q. 1908. A. 1908, I called your attention to that fact in your office.

Q. To what fact? A. To the fact that the detailed annual report was not included in the published reports.

Q. I do not have any recollection of it. A. I turned over to you the detailed report.

Q. For that year? A. Yes, sir.

Q. Turned it over to me personally? A. Yes, sir, you and Mr. Kresel.

Q. The detailed annual report for 1908? A. Yes, sir.

Q. Have we it now? A. Wait a minute, I don't know. You either you have it or I have it here. Yes, I have it here. I explained to you the reason that it was left out.

Q. To me? A. Yes, sir.

Q. When? A. You and Mr. Kresel.

Q. When? A. In the office, Mr. Kresel's office.

Q. When? A. A week ago on Tuesday.

Q. Showed me this paper? A. Yes, sir.

Q. My memory is failing rapidly. A. It is there.

Q. This is the first time I have ever seen it in my life. A. You did not look at it. I told you what it was and you passed it aside.

Q. We have it now, at least. A. Yes, sir.

Q. Why was it omitted that year? A. Because in making up the report, it was just left out by carelessness in reading proof.

Q. A most extraordinary thing, wasn't it, that the treasurer's report should be left out? A. Not at all.

Q. A usual matter? A. No, sir.

Q. Then why, if not usual, not extraordinary? Or would you prefer the word unusual? A. Unusual, yes, that is all right. I had the report in my office.

Q. There was a disbursement of \$1,750 to meet that year, it I recall the evidence correctly. Kindly show it to me in the report. A. I don't know as I can. I have not examined it.

Q. Paid to Mr. Betts for giving information in regard to progress of legislative bills? A. I called that to your attention, too.

Q. They had made that payment? A. No, I had some correspondence regarding it, and you said you did not care for it.

Q. I said I did not care for it? A. Yes, sir.

Q. My recollection is gone, not only failing, but disappeared. The first I had any knowledge of that is when Mr. Beardsley here, waiting several days, handed to us the correspondence and we looked it through and found it; and you had already called our attention to it? A. Yes, sir.

Q. Audibly? A. Yes, sir; I had a mass of correspondence in

your office, and you asked me what was in it, and I told you that there was all kinds of correspondence in it, and you said: "Well, relating to what we are getting at?" And I said: "I assume you are getting at the relation between the Street Railway Association and members of the Legislature," and you said, "That is right." I said that the only correspondence that I have that would lean that way at all, would indicate that it was connected with it in any way, shape or manner, were some letters in regard to the payment of some money to Mr. Betts for reports on legislation, and you said, "I don't care for that."

Q. That is most extraordinary, because that is just what I was looking after, and if you had suggested that to me, I cannot explain why it did make an impression upon me because it was the very thing I was after, that I was looking for, and Mr. Kresel only hands it to me yesterday after it was handed to me by Mr. Beardsley, and that was the first time to my recollection I had ever seen it; and you had already called our attention to it. We were very negligent, Mr. Pardee. A. Do you remember my explaining to you that we had reports on progress of legislation, and that we sent out copies of that report almost daily, to the managers of the company?

Q. Ah, I remember that? A. Yes, sir; that was at the same time.

Q. And you told me that you were subscribers to a legislative bureau in Albany, similar to the Fox Bureau, which sent out reports on bills, that I recall, but the \$1,750 — A. I did not say anything about the Fox Bureau, I never could have said it was similar to the Fox Bureau, that sent out information.

Q. This is most extraordinary. I will use the word extraordinary, in regard to myself, that I should not have known that. A. All right.

Q. You now show it to me in your annual report. A. I don't know as I can. I did not see it there.

Q. That is also extraordinary, isn't it? I can use that word there, couldn't I? A. I don't object to any word that you use.

Q. You would not object to using "extraordinary" if a little item of \$1,750 be omitted from the annual report. The report is omitted and the item omitted from the report? A. What do you mean by omitted?

Q. That expenditure, does that appear? A. I do not see it there, sir.

Q. It is not there, is it? You would see it if it were there? A. I am inclined to think so.

Q. Let me say the coincidence that this report does not appear in the annual report, and that this item does not appear in the report, you could properly use the word "extraordinary," couldn't you? A. No, sir; you are absolutely wrong.

Q. It is not extraordinary? A. No, sir; I have explained to you the reason that it was left out of the report.

Q. Why? A. For the simple reason that the stenographer, in taking the minutes of the annual convention, says, "Detailed report of treasurer presented," and that copy is ready, I helped prepare it, and I had the treasurer's report, and I supposed that it had been in the printed copy, until the copies were all out and delivered. Somebody called my attention to the fact that that report was not in, and I looked it up and preserved it.

Q. That explains that? A. Yes, sir.

Q. An explanation of that? A. Yes, sir.

Q. Give us the explanation why the expenditure of \$1,750 did not appear in the treasurer's report? A. I cannot explain it; I did not prepare the report.

Q. Would you say that I could with propriety term that "extraordinary?" A. I am not here to testify as to what you can term things.

Q. Well, unusual, isn't it, that an item of that amount should be omitted? A. Well, if it was paid during that year, I think that it is in that report somewhere. I do not suppose that that report represents every detailed payment that was made.

Q. Well, since you have been a member of the executive committee, Mr. Pardee, has the association or any of its officers as such had any income other than the dues paid by members? A. No, sir, not that I know of — there has been none. There has been no assessment fund.

Q. Would this observation be correct: The association seemed to have, about the time you became an officer, anticipated the new order of things and adopted what has appeared in the correspondence here as the new plan, which was to eliminate the

assessments, did it not? A. Yes, sir, I know that there were no assessments since I went into it.

Q. And now, since you have been a member of the association has the association or any of its officers as such to your knowledge paid any moneys to any member of the Legislature or any officer or employe of the Legislature for the purpose of aiding or retarding legislation? A. No, sir.

Q. Have they made any payments for any purpose whatsoever in connection with legislation? A. The only payments that I know of have been some payments made to Mr. Betts, and I saw in the morning paper that he was some officer of the State Legislature, clerk of a committee or something of that kind.

Q. That was incorrect, and I corrected that as soon as it was ascertained yesterday. A. Well, I don't know of any money paid to any official.

Q. Have any contributions been made by the association to political parties in any county, town or village or in the State? A. No, sir.

Q. Well then, the association when the old management went out seems to have adapted itself to the new order of things — is that a correct statement, Mr. Pardee? A. Well, I only know the plan that we followed, if you term it a new order of things, then that is what we followed.

Q. Have you heard much of the evidence here? A. No, sir.

Q. Have you heard any of it? A. I heard a little, I think it was a week ago Wednesday, the bookkeeper of Ellingwood & Cunningham was on the stand.

Q. It appeared that in June and July of the year when you entered, during that month the association collected by assessments upon its members over \$20,000, in fact, \$25,000, for political purposes. Now, if that was a habit they had, and if they were broken of that habit, would you say there was a new order of things? A. I should say so.

Q. Are you acquainted with Mr. Henry A. Robinson. A. I have met Mr. Robinson a few times.

Q. Have you seen him recently? A. No, sir.

Q. Do you know Mr. Rogers? A. I have met Mr. Rogers.

Judge BRUCE : That is all.

H. M. BEARDSLEY, recalled:

Examination by Judge BRUCE continued:

Q. Have you the book from which these leaves were taken?

A. I sent for the books of the Elmira Water, Light and Railroad Company, which covered that period. They are here. There are no leaves missing. The inference from that is that those letters which you have copies of there came from the books of the Rahway Valley Railroad Company, instead of the Elmira Water, Light and Railroad Company. Mr. Cole was president of that company, and I understand has sent for the books covering that period.

Q. Where did you get these leaves from? A. They were fastened in the association letter book.

Q. And where did you get the letter book from? A. Elmira.

Q. How long had that letter book been in your possession? A. It has been in our office always.

Q. How long had these leaves been fastened in it? A. Since the book was started.

Q. Ever since the book was started? A. Yes, sir.

Q. I understood you to say yesterday that you cut these out of the book in which there was a mixed correspondence, didn't you? A. I don't think I stated that fact, no. I don't think I did that, it was probably done by the stenographer; I don't think I did it.

Q. Do you know when it was done? A. It was done when that other book was started.

Q. Not since that time? A. No, sir.

Q. Now, reading from your evidence given yesterday referring to these sheets, I asked you :

"Q. Why didn't you produce these sheets that Mr. Cole just said you gave him? A. Is an explanation in order now?

"Q. No; why did you not produce those sheets? You received a subpoena to bring certain papers and those are omitted. Why? A. Those were copied in the books of the Elmira Water, Light & Railway Company, and the Street Railway Association had no letter book at that time. A little later, when it was found that there was going to be considerable correspondence, all letters from Elmira Water, Light & Railway Company which referred

to the Street Railway Association matters were taken out and put in the files of the Street Railway Association's books. The missing pages there related entirely to the correspondence of the Elmira Water, Light & Railway Company.

"Q. Are they in existence? A. Yes, sir.

"Q. Who made this sorting out? A. That was by me.

"Q. When? A. At the time.

"Q. At what time? A. About the 1st of January, I think, 1904." Do you wish to correct that evidence? A. Yes, sir.

Q. In what respect? A. Well, I will say that it was done by the stenographer, and I will also say that the pages are not in the Elmira Water, Light & Railway Company's books.

Q. You wish to correct your testimony also in that respect? A. Yes, sir.

Q. Was it done by the stenographer under your supervision or by your direction? A. Either my direction or Mr. Cole's.

Q. Is your recollection refreshed now so that you wish to change the evidence you gave yesterday? A. Well, I simply know that I would not have been apt to do that work myself.

Q. Didn't you know that yesterday? A. I probably did not get the entire drift of your question.

Q. I think it was very plain? A. I see it is.

Q. I say "By whom was this done," and you say "By me." A. It was done under my direction or Mr. Cole's.

Judge BRUCE : That is all. I shall need you again when Mr. Cole gets the books that he has sent for.

ALEXANDER S. HACKLEY, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside? A. Brooklyn.

Q. Whereabouts? A. 31 Hampton place.

Q. What is your present occupation? A. Clerk.

Q. Where? A. Tripp & Company.

Q. Where are they? A. 25 Broad street.

Q. In what line? A. Bankers and brokers.

Q. How old are you? A. 35.

Q. Were you formerly a member of the firm of Baxter & Hackley? A. That was not the name of the firm.

Q. What was the name of the firm? A. Hackley, Baxter & Seed.

Q. When did that firm come into existence? A. About this time of 1904.

Q. How long did it continue? A. About four years and a half.

Q. What was its business? A. Bankers and brokers.

Q. Who was Mr. Baxter? A. He was a son of Col. Archie E. Baxter, of Elmira.

Q. What was his first name? A. Charles H.

Q. Who was Mr. Seed? A. Mr. Allan H. Seed, a son of Mr. John H. Seed, of New York.

Q. Now, prior to the formation of this firm where were you employed? A. I was clerk for Ellingwood & Cunningham.

Q. How long had you been in their employ? A. Seven years.

Q. In what capacity? A. I started as bookkeeper and cashier, and I think I was in that capacity for about five years, and then afterwards I was chief clerk, confidential clerk.

Q. When did you first become chief clerk, confidential clerk? A. I should say about in 1902.

Q. Did you have any account with Ellingwood & Cunningham? A. Yes, sir.

Q. Did you have any trading account? A. No, sir.

Q. I show you one of the leaves from the loose leaf ledger of Ellingwood & Cunningham, and ask you if that was your trading account (witness examines paper)? A. I haven't the faintest recollection of this account at all. I know I never authorized these trades.

Q. Do you mean to tell me you knew nothing about that account? A. No, sir, I don't remember that at all.

Q. The account starts March 17, 1904, does it not? A. Yes, sir.

Q. And is wound up February 15, 1905, the date when the firm went into bankruptcy, is it not? A. Yes, sir.

Q. During that time you were confidential clerk, were you not? A. The account —

Q. Answer my question. During that period you were confidential clerk, were you not? A. Not all this time.

Q. You told me that you became confidential clerk in 1902 did you not? A. That is right.

Q. And continued so to the time the firm went into bankruptcy? A. I did not say so.

Q. How long did you continue as confidential clerk? A. I left the employ of the firm about this time in 1904.

Q. You mean in September, 1904? A. Yes, sir, the time I went in business for myself.

Q. Well, you will note that this account begins March 17th 1904, do you not? A. Yes, sir, and the last trade in the account the last purchase at least, is in August, 1904.

Q. You were still with the firm then, were you not? A. Yes sir.

Q. And in the capacity of confidential clerk? A. Yes, sir.

Q. Now, look at the account again and state to me whether or not that is your trading account? A. No, sir, it is not mine.

Q. In whose handwriting is it? A. That is the handwriting of Mr. Carpenter, the bookkeeper.

Q. Am I to understand you as saying that there was an account kept in the loose leaf ledger of Ellingwood & Cunningham of which firm you were the confidential clerk, extending from March 17th, 1904, down to the time that you left the firm, and finally wound up February 15th, 1905, without your knowledge? A. Yes, sir.

Q. Did you authorize or have any knowledge of any of the trades included in that account? A. Not that I can recall, now that is all new to me.

Q. Now, is this a matter of memory or a matter of knowledge. It is only six years ago — do you mean to state you cannot recall, or do you know you didn't have? A. I can't recall having any such account as this.

Q. If you had had it you could recall it, couldn't you? A. I think very likely I would.

Q. There wouldn't be any doubt of it, would there? A. Not if I had a personal interest in it.

Q. Did you have any knowledge of that account? A. No, I did not.

Q. Did you have any trading account whatsoever? A. None that I can recall whatever.

Q. Now, this account, you will note, includes purchases in 100 share lots of a considerable number of stocks, does it not? A. Yes, sir.

Q. At times the balances were as high, at one time, as \$32,000, that you owed the firm, in so far as this account is concerned — isn't that correct? A. That is correct, against long stocks.

Q. That is on July 26th, 1904, is it not? A. Yes, sir.

Q. And what stocks were they holding for you at that time? A. 200 shares of Missouri Pacific and 100 St. Paul.

Q. And you tell me that you never authorized these trades or knew anything about them? A. Yes, sir.

Q. On July 14th there was a purchase of 100 Missouri Pacific, on the 15th another 100, on the 20th 100 Brooklyn Rapid Transit, and on the 27th another 100. Do you mean to tell me you knew nothing about these transactions? A. Yes, sir.

Q. This was the first time you have ever known of this account? A. Yes, sir.

Q. The members of the Committee ask, who did you carry it for? I understood you to say you had no knowledge of that? A. No knowledge. I can't recall that account at all.

Q. You did not carry it personally or for anyone else? A. No, sir.

Q. Now, did you have any other account than a trading account concerning which you said you had no knowledge? A. Yes, sir.

Q. What other account did you have? A. I had an account on the books which stood in my name, which showed a credit to my account.

Q. What was that account termed? A. A. S. Hackley Special, I think was the style.

Judge BRUCE: I want to introduce this A. S. Hackley trading account in evidence.

(Marked in evidence as Exhibit 26.)

Judge BRUCE: I also wish to introduce in evidence, Mr. Chairman, if I may at this time, Mr. Bedell's account, which was introduced before.

(Such account consisting of four pages from the loose-leaf ledger, is marked in evidence as Exhibit 27.)

Judge BRUCE: I also wish to introduce in evidence Mr. Goodsell's account, consisting of three pages.

(Said account is marked in evidence as Exhibit 28.)

Q. Mr. Hackley, I show you another leaf from the loose-leaf ledger of Ellingwood & Cunningham, and ask you if that was your special account? A. It is not the one that I remember.

Q. What is the one that you remember? A. The only special account that I remember had a credit of \$10,000.

Q. This account opened with a cash credit on July 13, 1903, of \$7,500. Did you have any knowledge of that account? A. I don't remember that at all.

Q. Now, is it a matter of recollection, or do you wish to state positively that you have no knowledge of it? A. I wish to state positively, I have no knowledge of it now.

Q. Did you have any knowledge of it at the time it existed? A. It is possible that I did, but I don't remember it.

Q. Do you think you would have an account with them of \$7,500 credit that you would not recall seven years afterwards?

A. That is quite possible.

Q. In whose handwriting is that account? A. Mr. Carpenter's.

(Said account is marked in evidence as Exhibit 29.)

Q. What was your salary in 1903 with Ellingwood & Cunningham? A. \$40 a week.

Q. Was it ever more than that? A. No, sir.

Q. Did you have any money invested in the firm? A. No, sir.

Q. Are you a man of large means? A. No, sir.

Q. Were you at that time? A. No, sir.

Q. Do you think that a credit of \$7,500 to your special account with the firm would be a matter that would readily slip your memory? A. Oh, if I had known about it it would not have slipped my memory. If I had known it was there it would not have slipped my memory.

Q. Now I understand you to testify that you never knew it was there? A. As far as I know now, yes.

Q. Well, as far as you know now, did you ever know any differently? A. Not to my knowledge. I can't recall the account.

It is barely possible that I knew at the time that it was there, but I don't recall now that I did know it.

Q. Well, don't you think if an account existed there at the time you were getting \$40 a week, and it gave you \$7,500 credit, it might possibly have burned into your recollection so it would not be erased in so short a time? A. I think if I had known it was there I would remember it now.

Q. Did you ever know it was there, or didn't you? A. That is what I am trying to tell you.

Q. No, you are not. Did you or didn't you know it was there? A. I don't know.

Q. You don't know whether you knew it was there or not? A. No, I do not.

Q. Have you a pretty good memory? A. Yes, very good.

Q. Very good memory? A. Yes, sir.

Q. And yet you don't know whether you had a \$7,500 account with the firm in which you were getting a \$40 a week salary or not? A. No, sir.

Q. Did you have any interest in the account at all? A. No, sir.

Q. Or any part of it? A. No, sir.

Q. Did you ever see that page before? A. I did not.

Q. Did you ever know that there had been a credit of \$7,500 entered to you anywheres in the firm? A. No, sir.

Q. Did anyone ever speak to you about it? A. No, sir.

Q. Then why do you say you might have known it and perhaps forgotten it? A. I think that is very clear and very simple. I cannot recall now any recollection whatsoever of the \$7,500, and yet, the books don't lie. They are there. Now it may be possible that thing was there with my knowledge at the time.

Q. The same thing is true of the trading account too. There you were intensely positive that you never knew anything about the trading account. A. There are a great many ramifications to a trading account which don't appear to a credit account.

Q. If there should appear to be a great many ramifications to this account, do you think you would recall whether you had it or not? A. I think I would.

Q. Now, I want to give you a moment to reflect, Mr. Hackley, because I want to know and I intend to know whether or not you

knew at the time that this special account was there with the firm. Now take time to reflect and then answer my question. Now what is your answer? A. I don't think I knew it was there.

Q. Now, you still fall back on *think*. Did you or did you not in the year 1903, have an account, known as A. S. Hackle Special, with the firm of Ellingwood & Cunningham? A. Well, if it was there, it was there without my knowledge.

Q. Then you did not have any knowledge of it at all? A. No, sir.

Q. Now, will you hold in your hand this special account (handling witness account)? You will notice on the credit side of the entry, "July 13, 1903, cash \$7,500?" A. Yes.

Q. Did you know of that entry? A. No, sir.

Q. Did you on that date deposit with Ellingwood & Cunningham \$7,500? A. Not that I recall.

Q. Now, you go back again on recall. I don't want any recall. I want the fact. Did you or did you not? A. Well, you may get me to state that I did not deposit that money on that date, and then something may develop later which shows conclusively that that money was passed to my credit at that time, but of which I have no knowledge now.

Q. You mean to say that it was passed to your credit by you? A. Or somebody else.

Q. Now, I am not asking whether somebody else deposited for you \$7,500 on that day. I am asking whether you deposited it? A. No, sir.

Q. Did you ever have any knowledge that it had been deposited on that day? A. No, sir.

Q. Now, on the debit side there are no trades in this account at all, are there? A. No, sir.

Q. Just a credit and debit over on the other side. 1903, June 23, a withdrawal of \$500. Did you make that withdrawal? A. No, sir.

Q. Did you have any knowledge of it? A. No, sir.

Q. August 17, withdrawal \$300. Did you make that withdrawal? A. No, sir.

Q. Did you have any knowledge of it? A. No, sir.

Q. September 14, \$2,000. Did you make that withdrawal? A. No, sir.

Q. September 21st, \$1,000. Did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. October 2nd, \$150. Did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. October 9th, \$500. Did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. October 21st, \$2,000. Did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. October 27th, \$500; did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. October 30th, did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. November 6th, did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. May 12th, skipping from November 6th to May 12th, one hundred dollars; did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. May 7th, did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. July 14th, did you make that withdrawal or have any knowledge of it? A. No, sir.

Q. That makes in all \$7,500, did it not, and closed the account? A. Yes, sir.

Q. Were you acquainted with Mr. G. Tracy Rogers? A. Yes, sir.

Q. Knew him by sight? A. Yes, sir.

Q. Were you acquainted with Henry A. Robinson? A. No, sir.

Q. Were you acquainted with W. W. Cole? A. No, sir.

Q. You saw him on the stand here, Mr. Cole? A. Yes, sir.

Q. Did you ever see him before? A. I saw him a week ago yesterday the first time.

Q. Did you ever see him prior to that time? A. No, sir.

Q. Did you ever have any correspondence with Mr. Robinson? A. Not that I recall.

Q. Do you recall any correspondence with Mr. Vreeland? A. No, sir.

Q. Did you have any correspondence with Mr. Rogers? A. Oh, I think so.

Q. Did you have any correspondence with Mr. Cole? A. No, sir.

Q. Did you ever have any correspondence with Mr. Beardsley? A. No, sir.

Q. Now you tell me that you do remember a ten thousand dollar transaction? A. Ten thousand, did you say?

Q. Yes, sir. Tell me all about that. A. I came down to the office one morning and found a letter on my desk, addressed to me, which, upon opening, contained a check for \$10,000 to my order.

Q. Who from? A. I don't recall, except that it was from a trust company up State.

Q. That was on July 23, was it not, 1903? A. I don't know the date.

Q. Well, proceed. A. And my recollection is that there was no other enclosure — just the bare check, and I did not know what to make of it. I did not expect it. Nobody had told me that I was to receive this money.

Q. Quite a shock, wasn't it — it would have been to me? A. Rather a pleasurable shock; yes, sir. And so I just put it in my pocket, temporarily, anticipating that something would develop that would throw some light on the subject. And later in the day Mr. Rogers came to me and asked me if I had received something in the mail. I stated yes. He asked me what it was and I told him. He told me — or rather he asked me, I think, if I would place that to my credit on the books, and that he would tell me what to do with it later, which instruction I followed out.

Q. Did you place it to your own credit on the books? A. Special, yes.

Q. Yes? A. No, I did not make the book entry.

Q. What did you do with regard to having the entry made? A. Well, my recollection is that I gave it to the cashier and told him to credit my account — upon a special account to my credit.

Q. Did you ask him later whether he had done so or not? A. Why, I don't think so.

Q. Did you look in the ledger account to see if it was there? A. I don't think I did at the time.

Q. Did you subsequently? A. Yes, sir.

Q. Was it in the loose leaf ledger? A. Yes, sir.

Q. And did you find it there? A. Yes, sir.

Q. Will you kindly look and point it out to us, Mr. Hackley. there? The ledger is lying there. I will say frankly, we have been unable to find it (witness refers to books).

Q. Do you find it, Mr. Hackley? A. No, sir, I do not.

Q. Now, do you think it could be possible that you have confused in your mind the \$7,500 with the \$10,000? A. It is barely possible, but I doubt it very much, the ten thousand was so clearly impressed on my memory.

Q. Now, when you received this draft, do you recall on what trust company it was drawn? A. I don't recall the name of the trust company, but I remember that it was a trust company in Elmira.

Q. Do you think it was the Chemung Canal Trust Company? A. Yes, I do think so, but I am not positive.

Q. What did you do with this draft? A. I deposited it to my credit.

Q. To whom did you endorse it? A. Ellingwood & Cunningham.

Q. And where did you deposit it? A. With them.

Q. Gave it to the cashier, did you? A. Yes, sir.

Q. Did you ever see it again? A. No, sir.

Q. Now, do you recall whether or not you had a few days prior to that time received a check for \$10,000 from some person up the State? A. Prior to the receipt of this \$10,000 in question?

Q. Yes, sir. A. No, sir.

Q. Do you recall having received a check and returning it, asking that either the funds or a draft be sent? A. No, sir.

Q. When was the last time that you saw your \$10,000 account? A. Why, I presume it was shortly prior to my leaving the employ of the firm.

Q. Was it still there to your credit? A. It was not all there.

Q. How much had been withdrawn? A. I don't recollect, but I think half or more had been drawn.

Q. And the rest was still to your credit? A. I think so. I am not positive of that.

Q. Did you acknowledge the receipt of a draft? A. Not that I recall.

Q. Did you ever know from whom the draft came? A. Well, I knew it came from this particular trust company at the time.

Q. Did you know the person who sent it? A. No, sir.

Q. Did you ever know the person who sent it? A. No, sir.

Q. I show you a copy of a telegram which appears in one of the letter books of Ellingwood & Cunningham, under the date of July 23, 1903, which reads as follows: "Mr. W. W. Cole, Elmira. Your check returned. Please mail to-day New York funds for ten, order A. S. Hackley, E. & C.; charge Ellingwood & Cunningham." Did you have any knowledge of that telegram? A. No, sir.

Q. Then the check referred to as having been returned, was it received by you? A. Well, from that telegram I should say yes, it must be the same check.

Q. But later they sent a draft in place of this check; you say you received a draft on the Chemung Canal Trust Company for \$10,000. Did you receive a check prior to that time, which you returned? A. No, sir.

Q. Now, I show you a copy of a letter in one of the letter books of Ellingwood & Cunningham, for July, 1903, reading as follows: "July 27th, 1903. William W. Cole, Elmira, N. Y. Dear Sir: Yours of the 24th instant received, enclosing draft for \$10,000, for which please accept thanks. Your letter did not arrive until this morning, having been registered on the 25th, which explains the delay in arriving here. Yours very truly, A. S. Hackley." Did you send that letter? A. No, sir.

Q. Is that your signature? A. No, sir.

Q. Did you have any knowledge of its being sent? A. No, sir.

Q. Now, I show you copy of a letter appearing in the same book under date of July 23, 1903, reading as follows: "Hon. Louis Goodsell, Highland Falls, N. Y. Dear Sir: If you will call at our office any time after July 25th, we will have \$5,000 to deliver to you. Yours very truly, Ellingwood & Cunningham, A. S. H. dictated by." Did you dictate that letter? A. I do not remember doing so.

Q. Did you have any business relations with Senator Goodsell? A. Why, I had an impersonal relation with him as a clerk to one of the customers.

Q. What do you mean by impersonal? A. I recognized him as one of the customers of the firm.

Q. Did you ever have any business transactions with him? A. I, directly?

Q. Yes. A. No, sir.

Q. Did you owe him \$5,000? A. No, sir.

Q. Don't you think that if you wrote to a man whom you did not owe anything, or never had any business transaction with him, that if he would call there would be \$5,000 for him, you would have remembered it? A. I think I would.

Q. Did you write that letter or dictate it? A. I do not think I dictated it or signed it; it is not signed by me.

Q. Is the "Ellingwood & Cunningham" in your handwriting? A. No, sir.

Q. Did you have any knowledge of its being sent, at the time? A. No, sir.

Q. What does "A. S. H." stand for, the initials down in the corner? A. Those are my initials.

Q. Did you dictate the letter and authorize the placing of your initials there in typewriting? A. I think not.

Q. You come back to the word "think." Let us eliminate "think." Let us get down to facts. A. To the best of my recollection, I did not dictate that letter.

Q. We finally eliminate your impression that you might have forgotten having \$7,500 placed to your credit with the firm where you were getting \$40 a week. Now, do you think there would have been any possibility of your forgetting writing Senator Goodsell you would give him \$5,000 if he came around? A. I do not think there is any chance of forgetting that.

Q. Why don't you say you did or you did not? A. I cannot.

Q. You cannot? A. No, sir.

Q. You would not trust your memory? A. No; a letter of that importance and that length, I would not trust my memory.

Q. As to whether you dictated it or not? A. No, sir.

Q. Seven years ago? A. No, sir.

Q. You said you had a good memory? A. Very, but you must remember I dictated most of the mail that went out of the office. This is a letter of two lines, seven years ago, and the only connection that I have with this letter in any way, shape or form, is the fact that my initials appear underneath it. The stenog-

rapher might have very easily put them there without my knowledge or my consent.

Q. In view of the fact that the date is July 23rd, 1903, the very date on which you came into the office, and found upon your desk unexpectedly a letter containing a draft to your order for \$10,000, don't you think that would perhaps refresh your recollection? A. No, sir.

Q. Why was Senator Goodsell to come around and get \$5,000, do you know? A. No, sir.

Q. Were you going to give it to him? A. No, sir.

Q. Was he going to get it out of this draft of \$10,000? A. Not that I know of. I certainly was not going to give it to him.

Q. What was done with the \$10,000? A. It was passed to my credit on the books.

Q. What became of it after that? A. Why, when I left the employ of the firm, my impression is there was some left to my credit still.

Q. How much? A. I do not recall, but I think probably less than one-half of the original amount.

Q. What had become of the other \$5,000? A. I had paid the balance out to Mr. Rogers at various times.

Q. To him personally? A. Yes, sir.

Q. In what amounts? A. Well, amounts ranging, I should say, from \$300 to \$1,000 at a time.

Q. For what purpose? A. I don't know.

Q. Did he simply come in and say he wanted \$1,000 or \$500? A. Yes.

Q. And you gave it to him? A. Yes, sir.

Q. Did you ever think to inquire of him why you were carrying \$10,000 balance on which he had a right to call? A. It was he that told me to place this money to my credit, so I naturally assumed he had a perfect right to draw it out.

Q. Did you inquire of him why he wanted to place it to your credit? A. No.

Q. Did he tell you? A. No.

Q. He was evidently going to use you as a dummy, wasn't he, in the common acceptance of that word in business, as a medium? A. I was a medium, yes, I should say I was a medium.

Q. Had you been that frequently before? A. I think not; in fact, I know not.

Q. Had you ever done it before? A. No.

Q. Didn't it occur to you to inquire of him why you were to do this? A. No, sir, I did not consider it any of my business.

Q. Didn't you consider the placing of \$10,000 to your credit quite an item — A. If I had an interest in the \$10,000 I certainly would have been interested where it went, but I did not own any part of the \$10,000. It did not make any difference to me where it went.

Q. Then you mean by that, that at that time you were willing to act as a dummy for carrying any fund you might be requested to carry by members of the firm? A. I certainly would have been willing for members of the firm; I would not have done so for an outsider, but I considered Mr. Rogers my employer.

Q. I show you now, one of the cash books of Ellingwood & Cunningham, and show you an entry on page 55, October 9th, 1903, Hackley Special, to Binghamton Railroad Company, \$500. Is that in your handwriting? A. No, sir.

Q. Whose handwriting is that? A. That is the handwriting of Mr. Carpenter.

Q. That is Mr. Carpenter's, is it? A. Yes, sir.

Q. And this is also Mr. Carpenter's, isn't it? A. Yes, sir.

Q. Your special account? A. Yes, sir.

Q. Where will I find any of your handwriting in the books of Ellingwood & Cunningham? A. I doubt very much if you find any in these books; in the earlier books of the firm you will find my handwriting.

Q. In which book? A. There are some of the ledgers that you will find my handwriting in.

Q. Will you come over here and point it out to me? A. Yes, sir.

Q. On page 158 of Ledger No. 3, is in your handwriting, is it? A. Yes.

Q. Did you have any draft account with Ellingwood & Cunningham, other than this special account to which you have referred, any drawing account? A. No, sir.

Q. Now, when Mr. Rogers wished you to draw out some of this \$10,000, how did you draw it out? A. Cash, I think.

Q. By making a check? A. No, I think I would go to the cashier and get it.

Q. Was it currency? A. Yes, it is possible I gave a cashier's check, that is, a check on the firm for the amount which he would honor right in the cage.

Q. Did you preserve your vouchers? A. No.

Q. They were firm vouchers, weren't they? A. Yes, the firm may have preserved them; I did not preserve them.

Q. What is your best recollection as to whether you drew it out in check or whether you drew it out by currency and delivered it to Rogers? A. I am positive I didn't draw any out in check.

Q. If you drew it out in cash, where would it appear; in what book? A. It would appear in the blotter first.

Q. In the blotter? A. Yes.

Q. Will you look through the blotters from the time this \$10,000 was deposited until you left the firm, and see if you see any entries there, withdrawal of cash made by you. Will you look both in the blotter and the petty cash book?

(The witness proceeded to examine the books referred to.)

Judge BRUCE: Mr. Hackley, I won't be able to finish with you to-day, and if you will continue your examination of the books after adjournment, I will resume your examination if you will take the chair.

Q. Do you now have any distinct recollection on any occasion when Mr. Rogers told you that he wanted a part of the \$10,000? A. Do you mean as regards the specific date?

Q. Yes, or an approximate date? A. No approximate date. I have a specific recollection of his asking for some of the money, however.

Q. Did he want the check made to his own order, or to some one else's order? A. I think that I testified that in all cases it was cash.

Q. You think you are quite correct about that? A. That is the way I should have testified if I didn't — it was cash.

Q. I show you account, A. S. Hackley, special, of the \$7,500 deposit. I notice a withdrawal on September 14 of \$2,000; where would the original entry of that item appear? A. It would depend very largely upon whether it is cash or check.

Q. Will you go and look at the necessary books and see if you find that entry of September 14th, 1903?

(Witness examines books.)

Q. Do you find it? A. Yes, sir.

Q. In what book? A. In the blotter of September 14th, 1903.

Q. Will you please point out to me the entry? A. It is this here (pointing to book).

Q. How does it read? A. A charge of \$2,000.

Q. A. S. Hackley Special Account? A. Yes, sir.

Q. In whose handwriting is that? A. That is in the handwriting of the assistant cashier at the time.

Q. What is his name? A. He is a brother of mine.

Q. What is his name? A. Thomas Hackley.

Q. Where is he? A. I don't know.

Q. When did you last see him? A. I saw him about the early part of August.

Q. Where does he live? A. I don't know that.

Q. Where was he when you saw him in the early part of August? A. He was in my office.

Q. Where did he live the last time you learned of his residence or knew of it? A. Somewhere in 145th street, New York, but I don't know the number.

Q. East or West? A. West, I think; I am not positive.

Q. Do you recollect the number? A. No, sir.

Q. Is he a married man? A. No, sir.

Q. Do you think he is there now? A. I have no reason to think he is not there.

Q. Where is he employed? A. I don't know that.

Q. What is his business? A. He hasn't any.

Q. What is his age? A. About twenty-eight, I think.

Q. What was his business when he was last employed? A. Well, he has had so many jobs in the last two years I can't tell you.

Q. Of what character? A. Well, he is a clerk.

Q. You don't know where he is now? A. No, sir.

Q. If you were going to endeavor to communicate with him, where would you endeavor to communicate with him? A. I would not have the faintest idea where to go.

Q. Would you think of going to 145th street? A. If I made a canvass of every house on 145th street I might find him.

Q. On West 145th street? A. Yes, sir.

Q. Was he an employe of Ellingwood & Cunningham while you were there? A. For a short time.

Q. How long? A. Well, he was in their employ when I left.

Q. When did he commence with them? A. I should say about the early part of 1902.

Q. In what capacity? A. He went there as assistant cashier.

Q. Did he continue in that capacity? A. No, he was afterwards cashier.

Q. Was he cashier when he left? A. He was there until the firm failed.

Q. Did he live with his parents? A. He did at that time, yes, sir.

Q. Has he recently been living with his parents? A. No, sir.

Q. Where do his parents live? A. His parents are dead.

Q. Both of them? A. Yes, sir.

Q. Now, this \$2,000 that was withdrawn on September 14th, 1903, in what manner was it withdrawn? A. The blotter does not show — well, it may be either check or cash, it does not show.

Q. I didn't ask you whether it showed or not, but to whose order was the check made? A. I don't know.

Q. Did you know at the time? A. I don't think I knew anything about it, I don't remember anything about that.

Q. What was the occasion of your drawing \$2,000 on that date? A. I don't know that.

Q. Did Mr. Rogers tell you to draw it? A. I don't know. That is one of the charges in the account that I know nothing about.

Q. That is the \$7,500 account? A. Yes, sir.

Q. Not the \$10,000 account? A. No, sir.

Q. Do you recall ever having drawn any checks to the order of Ellingwood & Cunningham? A. On the part of myself?

Q. Yes, under your special account? A. Will you repeat that question, please?

Q. Do you recall having drawn any checks to the order of Ellingwood & Cunningham on your special account? A. No, sir.

Q. Did you ever draw any checks on Ellingwood & Cunningham signed by yourself? A. Yes, sir.

Q. Then you did have a trading account? A. No, sir.

Q. Under what circumstances were those checks drawn? A. Well, if I wanted to pay a bill with a check I would draw a check on the firm and meet it when it came in, or the cashier would meet it with money that I gave him for that. I didn't have a drawing account, merely a matter of convenience, that is all.

Q. Did you ever draw any such checks on your special account? A. No, sir.

Q. Or on Hackley Special? A. No, sir.

Q. (Showing paper to witness.) Look at this signature, and tell me if that is your signature? A. Yes, sir, that is my signature.

Q. Did you draw that check? A. Yes, sir.

Q. On or about the date when it is dated? A. Well, I don't remember it at all, but that is my writing, I must have drawn it. I don't have any recollection of it.

Judge BRUCE: I offer this check in evidence.

(Check received in evidence and marked Exhibit No. 30.)

Q. It reads, does it not, "New York, September 12th, 1903. Ellingwood & Cunningham, Bankers, 41 and 43 Wall Street, New York. Account S. F. Nixon. Pay to the order of Ellingwood & Cunningham Two Thousand Dollars, \$2,000.00. Alex. S. Hackley Special." Who was S. F. Nixon? A. Well, I never met anybody by that name, but I always understood that S. F. Nixon was Speaker of the Assembly.

Q. What were the circumstances under which that check was drawn? A. I haven't the faintest notion.

Q. Who told you to draw it? A. I don't know that.

Q. How did you happen to draw it? A. I can't tell you. May I look at the back of the check?

Q. Yes. A. Well, the check never went through any bank.

Q. No. To whom did it go then? A. It looks to me like a voucher, probably for the cashier's information or the bookkeeper's security or something. It looks to me like merely a voucher to be retained in the office and never to have gone out of the office.

Q. It was drawn by you and deposited with Ellingwood & Cunningham, wasn't it? A. No, I would not say it was deposited with Ellingwood & Cunningham.

Q. Well, given to them? A. Yes, given to them.

Q. For the purpose of transferring that amount to the credit of the party named, wasn't it, to the account of S. F. Nixon?

A. Yes, it looks that way.

Q. It looks that way, it is that way, isn't it, doesn't it read that way? A. It is to the order of Ellingwood & Cunningham.

Q. For the account of S. F. Nixon, isn't it? A. It says for the account of S. F. Nixon.

Q. Look in the blotter on that date. Doesn't it show that there was on that day a credit of the \$2,000? A. No, two days later.

Q. Well, two days later he was credited with \$2,000. It was the same day upon which you were charged. It was drawn the 12th, and your special account is charged with it on the 14th, and on that same day, the 14th, he is credited with the \$2,000? A. That is correct.

Q. Wouldn't you say this then was a means by which \$2,000 was transferred from the \$7,500 special account to Mr. Nixon's account? A. Yes, sir.

Judge BRUCE: That is all for to-day, Mr. Chairman. I would like the witness to return to-morrow morning and also Mr. Carpenter.

Chairman MERRITT: The Committee will stand adjourned until 11 o'clock to-morrow.

Adjourned to Friday, September 16th, 1910, at 11 A. M.

SIXTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, September 16th, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ISIDOR J. KRESEL, ESQ., *Assistant Counsel*.

Chairman MERRITT: The Committee will come to order.

Judge BRUCE: Mr. Hackley.

ALEXANDER S. HACKLEY, recalled:

Examination by Judge BRUCE:

Q. You have just requested me to look at your trading account with Ellingwood & Cunningham. A. Yes, sir.

Q. There it is. A. I notice that there is a small balance in this trading account of mine.

Q. How much? A. \$21.41.

Q. That is when the account was closed? A. Yes, when the account was closed, and at the time of the firm's failure it was transferred by a bookkeeping entry to account No. 20.

Q. It was transferred by a bookkeeping entry to account 20,

is that what I understand you to say? A. Yes, sir. Now in order to refresh my memory in regard to account 20, which I thought might lead to something regarding this account, I find that account 20 was an account kept on the books for a Doctor Benedict — Dr. A. J. Benedict. Dr. Benedict was the head of a sanitarium in the Catskills, and which sanitarium Mr. Cunningham was largely interested in financially. I had been ill for quite a long while, and at Mr. Cunningham's suggestion I spent quite a long time at this sanitarium.

Q. When? A. In the spring of 1903. Now the fact that this balance is transferred to 20 account, leads me to suppose that that account must have been opened for the benefit of Dr. Benedict, although I do not remember the account.

Q. By whom? A. By Mr. Cunningham, I presume.

Q. This account does not open until March 17, 1904, does it? A. That is correct.

Q. That was long after you had returned from the sanitarium, wasn't it? A. Yes. But Dr. Benedict and I were on very friendly terms, and the sanitarium was still open at that time, although I was not there. I had not been there for some months. This is merely an inference on my part, but that is the only way I can explain it.

Q. Have you anything further you wish to say? A. No, sir.

Q. Now what has refreshed your recollection in regard to this matter since yesterday? A. Why, in looking through the books yesterday I looked at the 20 account.

Q. Looking over the books here in the court room? A. Yes, sir.

Q. And you noticed what you have now stated in reference to account No. 20? A. I saw a charge in 20 account, a cash charge, to Dr. A. J. Benedict, and immediately the whole thing opened up to me that 20 was Dr. Benedict's account.

Q. Why could not you have told that yesterday? A. Because 20 account did not mean anything to me yesterday, but after seeing the ledger account and everything I recalled it.

Q. Did you see it after adjournment or before? A. After adjournment.

Q. Have you talked with anyone in reference to it? A. I told Mr. Cunningham I was going to make the explanation this morning.

Q. Did you discuss the matter with Mr. Cunningham and ask him to refresh your recollection as to what the account was? A. No, sir.

Q. But what you are stating now is a mere inference that this doctor's account was No. 20? A. Yes, sir.

Q. You have no knowledge of it? A. No, sir.

Q. No recollection? A. Of this account, no, sir.

Q. No knowledge or recollection of the doctor having this account? A. Not this one. I remember his account.

Q. All you have said is a mere inference from the fact that you find that the balance due on this account from the time the firm went into bankruptcy was transferred to this doctor's account? A. That is correct.

Q. Then I understand you to say now what you said yesterday, that you never had any knowledge of this account whatsoever? A. That is correct.

Q. Where was Dr. Benedict, did he have an office in New York? A. No, sir.

Q. Had no office anywhere but in the Catskills? A. Well, at that time — my acquaintance started with him about that time, and he was then the head of this sanitarium.

Q. Had you ever met him before he became the head of the sanitarium? A. I think I met him about the time he became the head of it.

Q. Where did he practice at that time? A. I don't recall. It was not in New York, though.

Q. It was not? A. I think not. I am not sure.

Q. Do you know where he is now? A. I was told some months ago that he was practicing medicine in Newburgh, but I have not seen him for six or seven years.

Q. Who told you that? A. Why, a man who is also interested financially in this same sanitarium, Mr. Frankel.

Q. This explanation that you have asked to make, therefore, is simply an inference which you have drawn from these circumstances which you have related? A. Entirely.

Q. You know nothing more about this trading account than you did yesterday? A. No, sir.

Q. And whoever opened it and whoever traded on it, did it without your knowledge and without your consent? A. Yes, sir.

Q. Did you have a check book with Ellingwood & Cunningham?

A. I think I did.

Q. Where is that check book? A. I haven't it.

Q. Well, where is it? A. I haven't the slightest notion. I never stubbed it in any way.

Q. Didn't you enter anything on the stubs whatsoever? A. No, sir.

Q. Simply drew the checks? A. Yes.

Q. Why did you get a check book? A. I thought I explained that yesterday, that I did not have a drawing account there, but occasionally, when I chose to pay a bill by check instead of cash, I would draw a check on Ellingwood & Cunningham and meet the check at the cashier's desk by the cash.

Q. Do you know where the check is, the check which you drew on Ellingwood & Cunningham for Mr. Nixon, which I showed you yesterday? A. No, sir.

Q. Did you have a regular check book from which you drew the checks that Mr. Rogers asked you to draw? A. I don't remember that Mr. Rogers ever asked me to draw a check.

Q. What did he ask you to do? A. He asked me for cash, occasionally.

Q. Didn't ask you to draw a check? A. Not that I remember.

Q. How did you happen to draw the check to Mr. Nixon then? A. Well, I think I stated yesterday that that was an office voucher. The check was never deposited in the bank and it looked to me as though that were given merely as a record for the cashier in making the entry, the original entry, and as authority for the bookkeeper to make the posting. It is merely a transfer in the office, although it appears on the office book.

Q. You did that at the request of Mr. Rogers? A. I could not say.

Q. If you did not do it at Mr. Rogers' suggestion, at whose suggestion did you do it? A. I might very readily have done it without any suggestion on the part of anyone. I might have done it myself.

Q. Why were you transferring \$2,000 from your account to Mr. Nixon's account? A. Oh, I undoubtedly had orders to make the transfer. I thought you meant the way I made the transfer.

Q. Who gave you those orders? A. Undoubtedly Mr. Rogers did.

Q. Do you have any recollection of it? A. No, I have not.

Q. Then that is a mere supposition on your part? A. That Mr. Rogers gave me instructions?

Q. Yes. A. Yes, sir.

Q. On what do you base that supposition? A. On the supposition that the money that I deposited to the credit of Hackley Special was deposited at the direction of Mr. Rogers to my account, but I had looked to him for orders regarding the withdrawal.

Q. Well, did anyone else ever give you any orders with regard to the withdrawal? A. I think not. I don't remember.

Q. Now, how much of that \$10,000 was withdrawn when you left Ellingwood & Cunningham? A. Well, I don't know exactly. I testified yesterday, if my memory serves me correctly, that over half of it had been withdrawn, but I am not sure of the amount.

Q. Well, when you last saw your account in which the \$10,000 was entered which we have been unable to find, what did it show?

A. It showed a credit of some amount — I don't recall the amount.

Q. What did it show with reference to withdrawals? A. It showed several cash withdrawals.

Q. In what amounts? A. I should say ranging from three hundred to a thousand dollars — possibly five hundred was the lowest.

Q. To whose account were they transferred? A. Most of them were in cash.

Q. And to whom did you give the cash? A. Mr. Rogers.

Q. He came in and got the currency? A. Came in and asked me for it, and I got it and gave it to him.

Q. Now, this was in July, the \$10,000 was received in — July 24, 1903. Now, you did not leave the firm for over a year, did you? A. Over a year after that.

Q. Now, during what part of that year were these withdrawals made? A. I could not tell you that.

Q. Well, were they made shortly after the deposit was made? A. Why, my recollection tells me that that money was undisturbed for quite a little while, and that the withdrawals were made at quite a little interval in between, between each one.

Q. Do you know to whom the withdrawals went? A. No, sir.

Q. In every instance I understand you to testify that you withdrew in cash and gave it to Mr. Rogers? A. Yes, sir.

Q. Did you draw any checks at all? A. I don't remember drawing any checks. I don't remember drawing that one which you showed me yesterday.

Q. Now, when you left the firm you still had approximately \$5,000 to your credit in the \$10,000 account, did you? A. I should say so.

Q. What became of that? A. I don't know.

Q. Did you ever inquire? A. No, sir.

Q. Did Mr. Rogers ask you, after you left the firm, to draw any checks or withdraw any cash? A. No, sir.

Q. From your account? A. No, sir.

Q. Did not? A. No, sir.

Q. Never heard anything further from it? A. No, sir.

Q. Now, I show you again account entitled A. S. Hackley Special — the \$7,500 account. I called your attention yesterday to the withdrawal of \$2,000 on September 14, 1903. You said you had no recollection in regard to it. I refreshed your recollection by showing you a check drawn by you on Ellingwood & Cunningham to the account of Mr. Nixon, \$2,000. Now let us take up the other withdrawals. There is a withdrawal of \$2,000 on October 21st. Do you recall the circumstances under which that was withdrawn? A. No, sir.

Q. Have you any recollection in regard to it? A. Not the slightest.

Q. Will you search your recollection for a moment, looking at the account, having in mind the date, and see whether you can in any way refresh your recollection as to that withdrawal? A. I have tried my utmost to refresh my recollection regarding this \$7,500 account and have been unable to do so. I cannot recall any circumstances regarding this account.

Q. Will you look at the books of Ellingwood & Cunningham and see if they in any way refresh your recollection? A. No, sir.

Q. Are you looking at the leaf in front of you? A. I have compared these two entries on this account. I see the dates coincide exactly.

Q. Well, does that in any way refresh your recollection? A. No, it does not.

Q. What do the books show? A. The books show that \$2,000 was taken from the Hackley Special on the date of October 21st, and placed to the credit of L. Goodsell.

Q. That was Ex-Senator Louis Goodsell, was it not? A. Yes, sir.

Q. Well, those facts would show, then, that on October 21st, 1903, \$2,000 was withdrawn from this account of Hackley Special, the \$7,500 account, and credited to the account of L. Goodsell, would it not? A. Yes, sir.

Q. Now, do you have any recollection in regard to any of the other withdrawals? A. No, sir, not at all.

Q. Take the first withdrawal, July 23, 1903, five hundred dollars, do you have any recollection with regard to it? A. No, sir.

Q. Do you know the circumstances under which that withdrawal was made? A. No, sir.

Q. Will you again examine the books of Ellingwood & Cunningham, and see if they in any way refresh your recollection or indicate how that withdrawal was made? A. It does not refresh my memory at all, sir.

Q. What does it indicate or show? A. It shows that Hackley Special was charged under date of July 23, 1903, with \$500, and that G. R. Malby was credited with a corresponding amount on the same day.

Q. That would indicate or show what? A. It would indicate that funds amounting to \$500 were transferred from my account to his.

Q. It says so right in the books, does it not? A. Yes, sir.

Q. Did you know George R. Malby, Senator Malby — that was Senator Malby, was it not? A. Yes, sir.

Q. Did you know him? A. Yes, sir.

Q. Did you have any business relations with him? A. No, sir.

Q. Did he owe you anything or did you owe him anything? A. No, sir.

Q. Did you draw any check and send it to Senator Malby? A. Not that I recall.

Q. This transfer was made in the same manner that the trans-

fer to Nixon was made, and the transfer to Goodsell, was it not? A. Well, except that Nixon's was through the agency of a check and these were not.

Q. Well, it was a transfer on the books, was it not, from your \$7,500 special account to his account? A. Yes, sir.

Q. That was done as a matter of bookkeeping, was it not? A. Yes, sir.

Q. That was true also with the account of Mr. Nixon, except that it was done through the medium of a check drawn on Ellingwood & Cunningham, and immediately deposited by you with them? A. Yes, sir.

Q. Do you know whether there was any check drawn in this instance? A. No, I do not.

Q. Do you know by whose authority that transfer was made? A. No, sir.

Q. Do you know by whose authority the transfer to Senator Goodsell was made? A. No, sir.

Q. Do you know by whose authority, or under whose direction, the transfer to Nixon was made, A. No, sir.

Q. Well, under whose authority or direction did you make all transfers? A. Mr. Rogers.

Q. Did you ever make any transfer under any one else's authority or direction? A. I am quite positive that I did not.

Q. But you say in regard to this \$7,500 account, you had no knowledge of it whatsoever? A. Yes, sir.

Q. You never knew of it at all until I showed you the account yesterday, you never knew it was in existence? A. No, sir.

Q. I understand your evidence to be that the only account you knew you had with Ellingwood & Cunningham, was the \$10,000 special account? A. Yes, sir.

Q. Which we have been unable to find? A. Yes, sir.

Q. And that account you remember seeing at or about the time you left the firm. Is that correct? A. Yes, sir.

Q. Was it in the loose-leaf ledger? A. Yes, sir.

Q. Now, you also recall that when you received that check so unexpectedly one morning when you got to your desk, that there were no directions accompanying it whatsoever? A. Yes, sir.

Q. And that you put it in your pocket and kept it for a short time, until Mr. Rogers came in? A. Yes, sir.

Q. The same day? A. Yes, sir.

Q. And he inquired of you whether or not you had received the \$10,000 draft? A. He asked me if I had received something in the mail.

Q. And you said you had? A. Yes.

Q. And showed him the draft? A. Yes.

Q. And he told you to open a special account and deposit the draft? A. Yes, sir.

Q. And that you did? A. Yes, sir.

Q. That is, you gave it to the cashier, and he opened the account which you subsequently saw on the books? A. That is right.

Q. And not only saw the credit on the books, but later saw the withdrawal on the books? A. Yes, sir.

Q. And that was in the loose-leaf ledgers? A. Yes, sir.

Q. And you also recall, do you not, that it was a draft made upon the Chemung Canal Trust Company of Elmira? A. I remember that it was on an Elmira Trust Company, or rather, that it was made by an Elmira Trust Company, a cashier's check on New York, and I am quite sure that it was the Chemung Canal Trust Company, but not positive, although that name seems familiar to me.

Q. That was rather an unusual name for a financial institution? A. Yes, sir.

Q. Which bank account of Ellingwood & Cunningham did that \$10,000 draft go in; they had several bank accounts, did they not? A. No, they only had two.

Q. What were they? A. Well, I will have to —

Q. Hanover National? A. I am not sure that they had the Hanover Bank account at that time. It all depends upon the time that the old bank of the State of New York, and the Bank of North America were consolidated.

Q. They had an account with the bank of the State of New York, did they, at one time? A. Yes, when I first went with them, they had.

Q. And also a bank account with the Hanover National Bank at one time? A. Yes, sir.

Q. I show you one of their check books, and ask you whether or not the account with the Hanover National Bank was in existence at this time? A. Yes, sir, it was.

Q. Now, do you know into which account this \$10,000 check went? A. I don't know, but it ought to have gone in the Hanover.

Q. Why? A. Because of the amount.

Q. Well, will you look — how were the records of the deposits kept at that time? A. In a separate book of deposits.

Q. What kind of a looking book was that, describe the book? A. My recollection of it is it looked something like a small cash book.

Q. When did you last see it? A. Why, just prior to my leaving the firm.

Q. Where was it usually kept? A. In the cashier's cage.

Q. By whom was it kept? A. Generally by the assistant cashier.

Q. We have made a very diligent and exhaustive search for that very valuable record, which would be of immeasurable assistance to the Committee, but cannot discover it. Can you make any suggestion by which you would aid us in any way, in discovering its whereabouts? A. Not the slightest, sir.

Q. Now, referring again to your A. S. Hackley Special, \$7,500 account, you notice a withdrawal of \$300 on August 17th, 1903? A. Yes, sir.

Q. Can you tell us the circumstances of that withdrawal? A. No, sir.

Q. Do you know to whom it was made? A. No, sir.

Q. Was it in cash or in check? A. I can't say.

Q. To whom was the delivery made? A. I don't know.

Q. By whose direction was the withdrawal made? A. I don't know that.

Q. You notice on September 21st, a withdrawal of \$1,000. Can you give us any information in regard to that? A. No, sir.

Q. Did you withdraw it in cash or by check? A. I don't know.

Q. By whose direction did you make the withdrawal? A. I haven't the faintest idea.

Q. Do you know to whom it went? A. No, sir.

Q. Or where it was credited? A. No, sir.

Q. On October 2nd, a withdrawal of \$150? Can you give us the circumstances of that? A. No, sir.

Q. On October 9th, a withdrawal of \$500. Can you give us the circumstances of that withdrawal? A. No, sir.

Q. The \$2,000 on October 21st, and the \$2,000 on September 14th, went respectively to Nixon and to Goodsell, didn't they?

A. That is right.

Q. On the 27th of October, there is a withdrawal of \$500. Can you give us any facts in regard to that? A. No, sir.

Q. Is the same thing true with regard to the \$50 on October 30th? That is rather a small amount; do you recall that? A. No, sir.

Q. November 1st, \$200, do you recall that? A. No, sir.

Q. There are no withdrawals then, until May, 1904, \$100. Do you recall that? A. No, sir.

Q. June 7th, \$100? Do you recall that withdrawal? A. No, sir.

Q. July 14th, \$100, which exhausted the account. Do you recall that? A. No, sir.

Q. You will notice that you are not credited with any interest in that account. A. I do notice that.

Q. That was unusual, was it not? A. Yes, sir.

Q. I understood you to say you left the firm about September, 1904? A. That is right.

Q. This account was exhausted July 14, 1904. Therefore, this could not be the \$10,000 special account about which you have been testifying? A. I don't see how it could be.

Q. It could not be, because you said that account still had a balance of nearly \$5,000 when you left. A. Yes, sir.

Q. Then this could not have been that account? A. No, sir.

Q. Now, in these withdrawals that I have indicated to you, in the case of Nixon and Goodsell and Malby, did you have any communication with any one of these gentlemen whatsoever? A. I don't quite get your idea.

Q. Did you have any communication with Mr. Malby? A. Through the agency of the mail, or personally, or in any way?

Q. In any way? A. I don't recall that I ever said anything to any one of them about these withdrawals.

Q. You have testified that you knew nothing about that, but simply discovered it on the books, and independent of the books, you had no knowledge of it whatsoever? A. No, sir.

Q. Did you notify them that that amount had been placed to their credit? A. Not that I recall.

Q. Did you notify them personally in the office? A. No, sir.

Q. You had no communication with any one of them whatsoever? A. No, sir.

Q. Now, do you recall ever having received any funds from Mr. Cole or any one connected with the Street Railway Association of the State of New York, other than the \$10,000 to which you have testified, and this \$7,500, of which you had no knowledge, but which appears upon the books? A. No, sir.

Q. You have no knowledge of ever having received any other amounts? A. No, sir.

Q. Do you recall having received a remittance from Mr. Cole in 1903, in the summer of 1903? A. No, sir.

Q. About the time you received the \$10,000, do you recall having received any other remittance from Mr. Cole, or from Elmira? A. No, sir.

Q. Do you recall having received \$2,500 on June 26th, 1903, which was just a few days before you received the \$10,000? A. No, I do not.

Q. I show you a copy of a letter appearing in Ellingwood & Cunningham's letter book, reading as follows: "June 26th, 1903. Mr. William W. Cole, Treasurer, Street Railway Association, Elmira, New York. Dear Sir: Yours of the 25th instant received, enclosing check for \$2,500, of which we will advise Mr. Rogers as soon as he returns to town. Yours very truly, Ellingwood & Cunningham." Did you know anything about that remittance? A. No, sir.

Q. Nothing whatsoever? A. No, sir.

Q. I call your attention to one of the check books of Ellingwood & Cunningham, May 27, 1903, to July 14th, 1903; you will note that check stub 45,073 reads June 26, 1903, the very date upon which this remittance was made which was acknowledged by the letter which I have just read to you, cash, W. W. Cole, \$500, exchange, and now, the following check, 45,704, reads check stub, June 26, 1903, cash, W. W. Cole, \$2,000. Now, that would indicate, would it not, that they had received the \$2,500 check of Mr. Cole's, which was included by the letter, and deposited it, and had drawn against it, one check for \$300, and one check for \$2,000; that would indicate that, would it not? A. The books would indicate that.

Q. And both were drawn to cash, were they not? A. Yes, the stub indicates that.

Q. It says so, does it not? A. The stub says that.

Q. Now, do you have any recollection in regard to that transaction? A. No, sir.

Q. Either one of them? A. No, sir.

Q. That does not refresh your recollection in any way? A. Not the slightest.

Q. As to who got the \$500 or who got the \$2,000? A. I don't know.

Q. I show you blotter of the firm, May 25th, 1903, to October 6th, 1903, and under the same date, I show you this entry, check of Chemung Canal Trust Company, twenty-five hundred dollars, \$2,500.00, and then the whole matter is erased. Does that matter in any way refresh your recollection? A. No, sir.

Q. You have no knowledge whatsoever in regard to that transaction? A. No, sir.

Q. In whose handwriting is that "Ch. of Chemung Canal Trust Company?" A. That is in the handwriting of a Mr. Stow, who succeeded me as cashier.

Q. Where is he? A. I think he is still down the street somewhere, he is in Wall street; I don't know just where he is.

Q. When did you last see him? A. I saw him about eight or ten months ago.

Q. What is his business? A. He is a clerk.

Q. By whom is he employed? A. I don't know.

Q. By whom was he employed when you last heard of him? A. He was working for Decoppet & Doremus, a firm down on the street.

Q. Whereabouts in the street? A. 42.

Q. What is his first name? A. Edgar.

Q. Edgar Stow? A. Yes, sir.

Q. How long was he the cashier of Ellingwood & Cunningham? A. Three or four years.

Q. Was he the cashier when you left? A. No, sir.

Q. Was he the cashier in 1903, in June? A. When I left?

Q. Yes. A. He was the cashier when I left, yes, sir.

Q. Was he the cashier in June, 1903? A. Yes, sir.

Q. Well now, I show you another letter appearing in the copy book of Ellingwood & Cunningham, which is of the same date as the letter which was written to Mr. Cole, acknowledging the receipt of the \$2,500, and this letter reads as follows:

“ June 26th, 1903.

Mr. G. T. ROGERS,
Binghamton, New York.

DEAR SIR:

We have this day deposited a thousand dollars to your credit in the Bank of Manhattan Co.

Yours very truly,
E. & C.”

Did you sign that letter? A. No, sir.

Q. Did you dictate it? A. No, sir.

Q. There is a memoranda made in ink down in the corner which says “\$500 O. K.; \$1,000 on hand; \$1,000 Manhat. Co.; \$2,500 received.” Now what does that “\$500 O. K.” mean? You see the thousand dollars is the thousand dollars they had on hand. The other thousand dollars they had deposited in the Manhattan Co. to the order of Rogers; \$1,000 Manhattan Co.; \$2,500 received. Now, the other \$500 they entered O. K. What did that mean? A. I don’t know.

Q. Were they in the habit of entering funds there O. K.? A. No, sir.

Q. Had you ever seen it done before? A. No, sir.

Q. You don’t know what it meant? A. No, sir.

Q. Now, you stated to me that you had no knowledge from whence this \$7,500 came which was credited to you under account of A. S. Hackley Special? A. Yes, sir.

Q. I call your attention to one of the blotters of Ellingwood & Cunningham under date of July 13, 1903; you see the entry, do you not, \$7,500; \$7,500, Street Railway Association, State of New York, A. S. Hackley Special, do you not? A. Yes, sir.

Q. And a line drawn through “Street Railway Association of N. Y. State?” A. Yes, sir.

Q. That would indicate, would it not, the source from which it came? A. Yes, sir.

Q. That was the same \$7,500 that appears in your account as A. S. Hackley Special? A. Yes, sir.

Q. Do you know why that line was drawn through? A. No, sir.

Q. Or by whom it was drawn through? A. No, sir.

Judge BRUCE: That is all. Mr. Carpenter.

GEORGE CARPENTER, recalled:

By Mr. BRUCE:

Q. Mr. Carpenter, I show you one of the leaves from the loose leaf ledger of Ellingwood & Cunningham, entitled A. S. Hackley; was that Mr. Hackley's trading account? A. I presume so, yes.

Q. It has been offered in evidence, it is Exhibit 26. You say you presume it is? A. Yes, sir.

Q. From what do you presume it is? A. From the fact that his name is on it.

Q. Have you any other information in regard to it? A. No, sir.

Q. Is it in your handwriting? A. Yes.

Q. From whence did you post it? A. From the blotter.

Q. Who made the original entries in regard to that account; where would they appear? A. In the blotter.

Q. The account itself in the ledger is in your handwriting? A. Yes, sir.

Q. The account itself in the ledger is in your handwriting? A. Yes, sir.

Q. And you simply posted from the blotter? A. Yes, sir.

Q. Will you step down, please, Mr. Carpenter, and look at one of these blotters and see if you can find any of the items which go to make up that account; do you find any of the items? A. This one here.

Q. What is the item? A. 100 Realty preferred.

Q. In whose handwriting is the entry in the blotter? A. I should say that was in Tom Hackley's writing.

Q. Who was Tom Hackley? A. He was a clerk employed by Ellingwood & Cunningham.

Q. A brother of A. S. Hackley? A. Yes, sir.

Q. Did you find any other items? A. No, sir.

Q. You do not find any others? A. Not in this book.

Q. Would it possibly be in the clearing house blotter? A. There might have been trades; yes.

Q. I show you Exhibit 29, being one of the sheets entitled "Miscellaneous," from the loose leaf ledger, and call your attention to the account of A. S. Hackley Special; in whose handwriting is that? A. That is in mine.

Q. Where was it posted from? A. The blotter.

Q. There is only one cash item in connection with it that is a deposit, and that is \$7,500, on July 13, 1903, is it not? A. Yes.

Q. You will notice that the withdrawals begin on July 23rd, 1903, and continue to July 14th, 1904, when the whole amount was withdrawn; is that not so? A. Yes, sir.

Q. Opposite these withdrawals, which go from \$100 to \$2,000, there are no entries whatsoever excepting the date; why is that? A. Because they were merely cash taken out.

Q. Does that indicate that they were all cash taken out? A. Yes, it was all taken out.

Q. You do not understand my question? A. It was either cash or the firm's check.

Q. Either cash or the firm's check? A. Yes, sir.

Q. Suppose there was a transfer, for instance taken from the fund of \$7,500, say to Mr. Goodsell or to Mr. Nixon or to Mr. Malby, or to anyone else, how would that appear? A. That might have been transferred; it merely shows it was charged to the account.

Q. How would those transfers be effected? A. Through the blotter.

Q. I show you Mr. Goodsell's account; you note, do you not, on October 21st, 1903, a credit, cash H, Special, \$2,000; is that in your handwriting? A. Yes, sir.

Q. Was that a transfer from this \$7,500 account? A. I could not say that unless I saw the book it was transferred from.

Q. Did Mr. Hackley have any other special account? A. Not that I know of.

Q. If you will look at this Hackley Special, \$7,500, special, you will find under the same date, do you not, July 23rd, that

this account is charged with \$2,000, do you not? A. That is right.

Q. Now, on the very same date, Mr. Goodsell's account is credited with \$2,000? A. Yes, sir.

Q. That was a transfer then by a method of bookkeeping, was it not? A. I don't know that this \$2,000 is; this \$2,000 — I cannot say it positively unless I see the books.

Q. What other book do you wish? A. The blotter or the cash book of that date.

Q. You say this was the only Hackley special account that you knew of? A. Yes, sir.

Q. And in your handwriting in the ledger is a credit to Mr. Hackley of that date of \$2,000 from Hackley special, isn't it? A. It says H. Special. I presume it is that account. I cannot say positively.

Q. You think that is a very forcible presumption, when it says \$2,000 H. Special, and you turn over to H. Special, and you find \$2,000 charged. Do you think it is a very forcible presumption that that is the same \$2,000? A. It probably is.

Q. And you kept the books and all in your handwriting; don't you know it is the same transfer? A. No, I don't know it.

Q. I show you the cash book of that date; do you see on the same date, October 21st, 1903, H. Special, charged with \$2,000? A. Yes, I see it now.

Q. Do you see on the other side, L. Goodsell credited with \$2,000? A. Yes, sir.

Q. Now, do you think it is the same \$2,000? A. Yes; that is the same \$2,000.

Q. That was accomplished by a transfer being made on the books from this special account to the credit of the Goodsell account, was it not? A. Yes, sir.

Q. Examine the account of Mr. Malby, \$500, July 23rd, from Hackley Special; referring again to Hackley Special, July 23rd, \$500; that is a transfer of \$500 from this account to Malby's account, is it not? A. Yes, sir.

Q. By bookkeeping; that is by simply charging Hackley Special with \$500, and crediting the Malby account with \$500; is that correct? A. Yes, sir.

Q. The same thing is true of the Nixon account, is it not? A. Yes, sir.

Q. Referring to his account appearing under the date of September 14th, 1903, you also see, September 14th, 1903, A. S. Hackley Special, charged with \$2,000, do you not? A. Yes, sir.

Q. And he credited on the same day with the \$2,000? A. Yes, sir.

Q. And that was a transfer to him of that amount, was it not? A. Yes, sir.

Q. From that account? A. I don't know. It does not say so there.

Q. What does it say? A. It says, credit, \$2,000.

Q. On the same day? A. Yes, sir.

Q. With the withdrawal of \$2,000? A. Yes, sir.

Q. I show you Exhibit 30, being a check drawn on Ellingwood & Cunningham, by Alexander S. Hackley, Special, to the account of S. F. Nixon, on the same date as the \$2,000; do you now think it is the same \$2,000? A. Yes, sir.

Q. These transfers did not all occur upon the same date, did they; the transfer to Senator Malby was July 23rd, 1903, wasn't it, \$500? A. Yes, sir.

Q. The transfer to Nixon was September 14th, 1903, \$2,000, wasn't it? A. Yes, sir.

Q. And the transfer to Goodsell was October 21st, 1903, \$2,000? A. Yes, sir.

Q. How did you come to make these transfers from this account to this account to which I have referred, to Malby, Nixon and Goodsell? A. Well, you mean initiate them; I did not make the transfers; I merely posted them.

Q. You merely posted them from the blotter? A. Yes, sir.

Q. You had no personal knowledge in regard to the transactions whatsoever? A. No, sir.

Judge BRUCE: We will call Mr. Vreeland.

HERBERT H. VREELAND, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Vreeland? A. 239 West 72nd street, New York city.

Q. What is your business? A. President of railroad corporations.

Q. What corporation? A. At the present time I am president of the Metropolitan Securities Company, the 42nd street and Grand street Ferry Railroad Company, 34th street Crosstown, and some others.

Q. Were you at one time president of the Metropolitan Street Railroad Company? A. I was.

Q. During what years? A. From 1893 or 1894, at the time of the organization of the company down to approximately some time around 1900 or 1901. I am not sure of the date at all.

Q. Were you at one time an officer of the Street Railway Association of the State of New York? A. As president of the Metropolitan Street Railway Company, I was.

Q. What office did you hold with the Street Railway Association of the State of New York? A. As representing the Metropolitan Street Railroad Company, I was on the executive committee of that association.

Q. And do you recall when you first became a member of the executive committee? A. I do not.

Q. Did membership in the executive committee of the State Railway Association of the State of New York follow *ex officio* from being president of the Metropolitan Street Railway of the city of New York? A. It did not.

Q. You mean, therefore, I take it, at the time you were a member of the executive committee, you were president of the Metropolitan Street Railway Company of the city of New York? A. I am making a distinction between H. H. Vreeland, the individual, and H. H. Vreeland, representing the Metropolitan Street Railway.

Q. As a member of this executive committee you were representing the Metropolitan Street Railway Company? A. That was the way I got into the association.

Q. You say, Mr. Vreeland, if I understand you correctly, that you want to make a distinction between yourself personally and yourself as president of the road. Now do I understand this distinction you are making to lead to the fact in your mind that your

membership on this executive committee was as representing the Metropolitan system? A. That is correct.

Q. Do you recall when you first became a member of the executive committee in the capacity in which you have stated? A. I do not.

Q. It was in the year 1895-96, was it not? A. I show you, for the purpose of aiding your recollection, the report of the 28th annual meeting of the association. That is correct, is it not, Mr. Vreeland? A. I don't know as that was the first time I was on to it, but this says here that in 1895 and 1896 I was on the executive committee.

Q. From an examination which I have made, which I will ask you also to make, of the report of the association, which goes back to 1883, evidently when it was formed, does not show that you, prior to that time, had been an officer of the association. Will you just see if my search is correct? On the preceding pages from that the report entitled, officers since organization, which begins in 1883 and 1884, and as I look down through the list of officers I do not find your name until 1895 and 1896. A. That is correct.

Q. Now when you first became a member of the executive committee Mr. G. Tracy Rogers was president of the association, was he not? A. Yes, sir.

Q. You are acquainted with Mr. Rogers, are you not? A. I am.

Q. You have known him a great many years? A. Practically since that time.

Q. Had you known him before you became a member of the executive committee? A. I do not recall.

Q. Now, you were also a member of the executive committee in the years 1896 and 1897, were you not? A. Yes, sir.

Q. And that year Mr. Rogers was also president? A. Yes, sir.

Q. And the secretary and treasurer was Mr. Henry A. Robinson, who was a vice-president of the Metropolitan Street Railway Company, was he not? A. That is what it states.

Q. Does that conform to your recollection? A. I have no recollection as to years. I am merely repeating what I see here.

Q. Have you any recollection as to when Mr. Robinson was vice-president of the Metropolitan Street Railway Company? A. I have not.

Q. He was the vice-president for a time, was he not? A. He was at some period.

Q. You have not any reason to believe that he was not vice-president in 1896 and '97, have you? A. I have no reason to either believe or disbelieve it.

Q. Do you know Mr. Robinson? A. I do.

Q. You have known him for a number of years? A. I have.

Q. When did you first become acquainted with him? A. When he was appointed to some position in the legal department of the Houston, West Street and Ferry Railway Company, I think it was.

Q. Can you recall about what year it was? A. It was approximately 1893.

Q. You were also a member of the executive committee as representing the Interurban Street Railway Company of New York in 1897 and 1898, were you not? A. It don't say so here.

Q. Look across the page (referring to book). A. No, I guess there is a difference, Judge.

Q. Mine, which is the 25th report, says it was the Interurban. Yours, which is the 26th, says the Metropolitan. Which is correct, according to your recollection? A. It must have been the Metropolitan. The Interurban was not formed until some time in the nineteen hundreds.

Q. You were a member of the executive committee that year, and also president of the Metropolitan, and during that year Mr. Rogers was president of the association, and Mr. Robinson its secretary and treasurer, was he not? Down at the bottom. A. Yes, but in the meantime Mr. Robinson seems to have changed.

Q. He has now become also solicitor; he has become solicitor of the Metropolitan instead of vice-president; is that correct? A. That is correct.

Q. In the years 1903 and 1904 you ceased to become a member of the executive committee, did you? A. Yes, sir.

Q. In 1898 and 1899 you were also a member of the executive committee? A. Yes, sir.

Q. And president of the Metropolitan? A. Yes, sir.

Q. Mr. Rogers was the president and Mr. Henry A. Robinson was the secretary and treasurer, was he not? A. That is correct.

Q. And in 1899 and 1900 you still continued a member of the executive committee? A. Yes, sir.

Q. And the president of the Metropolitan? A. Yes, sir.

Q. And Mr. Rogers was the president of the association and Mr. Henry A. Robinson its secretary and treasurer? A. Yes, sir.

Q. The same thing was true in the years 1900 and 1901, was it not? A. Yes, sir.

Q. And the same thing true in 1901 and 1902? A. Yes, sir.

Q. And in 1902 and 1903 you were still a member of the executive committee, but president of the Interurban Street Railway Company? A. That is correct.

Q. And Mr. Rogers was still president of the association and Mr. Henry A. Robinson its secretary and treasurer? A. That is correct.

Q. But after 1902 and 1903 you were not an officer of the association? A. No, sir.

Q. What was the object of this association? A. It was primarily for the questions connected with the development of railroad standards and construction and operation, things of that kind.

Q. And what was it secondarily? A. Secondarily it had a great deal to do with matters of legislation.

Q. What did it have to do with matters of legislation? A. The association, or the associated properties of the State of New York, were interested very much in uniformity of State legislation. There had been a great many bills introduced into the Legislature affecting the rights of some particular property in the State which went into a general law affecting other railroads very disastrously, and there was an effort made to secure a uniformity of legislation throughout the State.

Q. And what was the character of that effort? A. It was, so far as I was acquainted with it, the work of the president of the association.

Q. Did the executive committee take any part in that report? A. Not that I have any recollection of, farther than such consultations with the president as he sought.

Q. And did the president from time to time report to the executive committee what that effort was which was being made to secure this uniform legislation? A. He did in a way, by a review of the bills, etc.

Q. That is, bills that were pending, or reports made after the Legislature with reference to bills which did not pass, and bills which did pass? A. I could not say as to that.

Q. Did he ever state to the executive committee the efforts which he was making, being specific as to these efforts? A. I cannot recall any specific thing, any more than his stating at times about the number of hearings he attended at Albany, and the work of compilation, etc., of the various bills, and submitting them to the membership of the association—general matters of that character.

Q. Did the association in its effort to secure this, what you term uniform legislation, participate any in politics? A. Not to my knowledge, as an association.

Q. Did the president or members of the executive committee participate to any degree in politics in securing uniform legislation? A. So far as H. H. Vreeland was concerned, he did not.

Q. In the meetings of the executive committee did the president, Mr. Rogers, ever state what he thought it was necessary to do in order to secure uniform legislation? A. I do not recall any such statement.

Q. Did he ever bring it to the attention of the executive committee that he deemed it necessary that the members of the association should in anywise participate in politics for the purpose of securing uniform legislation? A. I have no recollection of it.

Q. Did any of the members of the association to your knowledge participate in politics with either political party for the purpose of securing uniform legislation? A. I could not answer. It is too long ago.

Q. Do you know what the sources of income were of the association? A. Yes. They were sources from the regular dues of the association, and assessments made for its special purposes.

Q. What were those special purposes? A. To supply the special fund of the president with moneys.

Q. For what purpose? A. I don't know.

Q. Did not he ever state? A. Nothing farther than political contributions.

Q. Then he did state that the association was participating in politics to some extent to secure uniform legislation, did he not?

A. Well, I don't know.

Q. Why, if I recall your evidence correctly, I understood you to say, Mr. Vreeland -- I may have misunderstood you -- that nothing was said by the president as to what should be done in order to secure uniform legislation, so far as politics were concerned? A. I don't recall that.

Q. Then what did he say it was necessary to do, so far as participating at all in politics was concerned, in order to secure uniform legislation? A. I have no definite recollection beyond the question coming up of campaign contributions.

Q. Oh, he stated, did he, that it was necessary to make campaign contributions? A. He stated that he thought it was a good thing.

Q. Now when did he first state that, do you recall? A. I do not.

Q. Was it about the time you first became a member of the executive committee? A. I have no recollection.

Q. Well, do you recollect whether there was any change of policy in that respect as to when you first became a member and later? A. No, I do not.

Q. Well, would it be your best recollection that when you first became a member of the executive committee and Mr. Rogers was president, that he stated to the executive committee that it was necessary to make campaign contributions, in order to secure uniform legislation? A. I could not testify as to any period of time.

Q. Now you say there were two funds, or two sources of income, the dues and assessment fund? Were those funds kept together or separate? A. I have no information on that.

Q. Did you, as a member of the executive committee, feel it your duty to make any inquiry as to how the finances of the association were conducted? A. I did not.

Q. Did you know that while Mr. Robinson was secretary and treasurer, who was at that time vice-president of the road of which you were president and afterwards its general solicitor, kept these accounts? A. He must have, to have been in that position.

Q. Did you know at the time that he did? A. I would have to assume that he did. I never saw the accounts.

Q. Well, did you ever talk with him about it? A. I had no occasion to talk with him.

Q. Did you ever talk with him about it? A. I don't recall having talked to him about that.

Q. Did Mr. Robinson ever say anything to you regarding these assessments? A. Mr. Robinson I don't recall ever did.

Q. Now Mr. Rogers, did he say which party he thought it would be necessary to contribute to in order to secure uniform legislation? A. I don't recall.

Q. Well, do you think that he was partial at all, or did he discriminate between the Republican party and the Democratic party? A. I have no idea, because I don't know what he did.

Q. He made no statement in regard to which party he thought it would be necessary to contribute toward? A. He did not.

Q. Did he ever state which party he had contributed to? A. He did not.

Q. Did you have any means of knowing or did you know which party these contributions were made to? A. No, sir.

Q. Well, you were a member of the executive committee, were you not, Mr. Vreeland? A. I was.

Q. You were and you had been a member of the executive committee of a great many associations or corporations, had not you? A. I may have been; I don't recall now.

Q. Of being a member of the executive committee of any corporations or associations? A. I say I may have been. I presume I was.

Q. Did not you deem it your duty as a member of the executive committee to keep yourself informed in regard to the operations of these corporations, and particularly with reference to their finances? A. If I belonged to any executive committee whose by-laws or constitution required that duty of me, I assume that I did it.

Q. Well, did the by-laws and constitution of this association require that duty of you, as a member of the executive committee of this association? A. I don't know.

Q. Did not you ever examine the by-laws or constitution? A. I may have, at some period.

Q. Well, can you give me any reason why it is that you as a member of the executive committee, because it has appeared in evidence here — or, I may say for your information, rather, it has appeared in evidence here that some very large sums of money were disbursed by Mr. Rogers in the manner in which you have

indicated. Did you deem it your duty as a member of the executive committee to have knowledge as to how these funds were being disbursed? A. I did not.

Q. Was it the policy of the executive committee to turn this whole matter over to Mr. Rogers? A. It was.

Q. And to know as little about it as possible? A. I would not say the latter, but it was turned over to Mr. Rogers.

Q. Was it given over wholly to him, or did the executive committee in part aid him in that work? A. I don't recall any aid given.

Q. The by-law No. 2 provides that the executive committee shall have entire charge of the management of the affairs of the association. Was this one of the affairs of the association (showing witness by-law)? A. It was.

Q. Well, then, with the diligence with which you have indicated that you would discharge your duties as a member of the executive committee, did you and the other members of the committee insist upon having entire charge of the management of this department of the association's work? A. Not to my recollection.

Q. Well, now, to be frank, Mr. Vreeland, did Rogers say anything to the executive committee about the disbursing of these large sums of money raised, or did the executive committee shut its eyes and tell Rogers to go ahead and do what he thought best? A. Covering a period of years like that, and not having been connected with the association for some time, and having a few other matters in my head, I cannot answer such a broad general question as that.

Q. Let us make it more specific then. See if I cannot refresh your recollection. This was not the ordinary routine business. This was not ordinary routine business, this contributing to political parties for the purpose of securing uniform legislation, was it? A. I should say it was the ordinary routine business of corporations for a good many years.

Q. To contribute, the corporations with which you were connected? A. Well, I am saying that on general information.

Q. Well, let us take it specifically. Let us have it refer to the corporations with which you are connected, because that you would have knowledge of. Did the corporation with which you are con-

needed for many years make contributions to political parties for the purpose of securing uniform legislation? A. I don't know what they made it for, but they made it.

Q. Well, now, what corporations with which you were connected made these contributions? A. The Metropolitan Street Railroad Company.

Q. During what years? A. I suppose they made them every year — I don't know.

Q. Well, when did you first become connected with the Metropolitan? A. In 1893.

Q. Now, let us have 1893. What sums do you think they contributed in 1893? A. I have not any knowledge.

Q. Did you have knowledge at that time? A. I assume I did.

Q. And to what parties did they make the contributions? A. Practically every party that was represented.

Q. Represented where? A. In the State or nation.

Q. Well, do you mean practically every party that had a column on the ballot or do you mean every party that had votes in the Legislature? A. Well, I should say it was, from my experience covering a number of years, that it was everybody that ever ran for office.

Q. Did you contribute to those — for instance, we will take up the Prohibition party — did they make any contributions to the Prohibition party? A. I could not say, specifically.

Q. Well, would you think they did? A. Well, I might personally, as I am a prohibitionist.

Q. I was not asking what you did personally. I am speaking about the Metropolitan. You have a right to make such contributions as you see fit to the Prohibition party, the Republican party or any other party. We are as a Committee not concerned with that, but we are intensely concerned with the question of contributions by corporations to political parties. Now, going back, you say in 1893 — I don't want to make the matter facetious, you contributed to every political party. Don't you think that was a rather broad statement — but you mean by that, that you contributed to the leading political parties? A. I was not referring to 1893 at all when I made that statement — I was referring to a period of years, and so stated.

Q. And the period of years began in 1893? A. That is correct.

Q. I want to take it up in detail. Do you recall what contributions were made by the Metropolitan in 1893? A. I do not.

Q. But you recall that they did make contributions? A. I say, I think they made them every year that I was connected with them.

Q. Well, is it a matter of mere presumption or thinking, or is it a matter of knowledge with you? A. Well, it has been largely a matter of thinking.

Q. Were those contributions made without your knowledge and sanction at the time? A. I don't believe they were, if they were made.

Q. Well, they were made, you state, then they were made with your knowledge and sanction. Now do you recall to what political party or in what amounts contributions were made by the Metropolitan in 1893? A. I do not.

Q. Now the Metropolitan kept, I assume, a complete set of books at that time? A. I think they did.

Q. Now where would these withdrawals or these contributions appear, in what book? A. I have not any idea. I did not keep the books.

Q. I know you did not keep the books. Don't think that I thought that, Mr. Vreeland. But won't you kindly tell me — you say they were made with your knowledge — now will you give me the names of the person or the duties of the person who actually made the withdrawals, my object being, as you will know, to find out where the book is, and who made the withdrawals, in order that I may aid your recollection? A. I have no recollection now.

Q. Well, would they be made by the treasurer? A. I don't know.

Q. Who signed the drafts by which withdrawals were made from any funds of the company, the Metropolitan, in 1893? A. I don't know now.

Q. Who was charged with that duty, or entrusted with it? A. Various officers, vice-presidents, and presidents and treasurers.

Q. Well, those withdrawals would be entered in the local books of the Metropolitan for that year, would they not? A. I don't know whether they would or not.

Q. Well, was it the custom of the Metropolitan to have withdrawals made from its funds without keeping any records of them? A. I don't think so.

Q. Now, Mr. Vreeland, be frank with me and tell me how the Metropolitan went about making its contributions in 1893. You will recall, and I do this perhaps to aid your recollection, that in the Hughes investigation, it appeared that other large corporations and financial institutions in town made contributions, and a distinguished gentleman, who was influential in the management of the Republican party, stated that they drew the cash and gave it to him. Was that method adopted by the Metropolitan in 1893? A. I haven't any recollection of it.

Q. As to the method only — was that the method in 1894? A. I don't know.

Q. Well, how long have these contributions continued since 1893, down to what period? A. I don't know.

Q. Well, how long do you recall their having been made? A. I only recall specifically one contribution that I had to do with. That was made somewhere around 1903.

Q. 1903? From what company was that made? A. The Metropolitan Securities Company.

Q. And to whom was it made? A. To the Republican and Democratic organizations of the State of New York.

Q. That is, the State committees, Republican and Democratic? A. Yes, sir.

Q. What were the amounts? A. I think \$25,000, \$20,000 or \$25,000 to the Republican committee, and about \$17,000 or \$18,000 to the Democratic committee.

Q. Why the distinction in amount, or was there an occasion for the distinction, if you know? A. I don't know. I presume it was what was asked for.

Q. Was it based in any way upon their representation in the Legislature? A. No, I should say not.

Q. You think it was the amount asked for? Was it the custom of the organizations of the two political parties to request these contributions? A. I don't know as to the custom, I know it was done at that time.

Q. And who made the request? A. The chairman of the Republican State Committee.

Q. Who was the chairman — I don't know. A. Neither do I.

Q. Can't you recall? A. No.

Q. Well, I will endeavor to look it up and aid your recollection. Did he make it personally? A. He didn't to me.

Q. Do you have the knowledge that he made it personally? A. I think he made it to somebody connected with the property, because I was asked to send the money along.

Q. Did you simply infer that he made the request from the fact that someone connected with the properties asked you to send the money along, or is it a matter of knowledge upon your part? A. Well, I should say it was mere inference.

Q. Well, of course, Mr. Vreeland, mere inference would be of no value to the Committee. Do you recall whether or not who the person was that was connected with the properties that requested you to send the money? A. I am not clear on that now.

Q. Did you send the money? A. I did.

Q. Twenty-five thousand dollars? A. I say I am not clear there as to the subdivisions, but it was approximately that.

Q. What time of the year was it that you sent it? A. Somewhere around in October, I think.

Q. 1903? Now there was no state campaign in 1903, was there? A. I don't know as it was in 1903. It may have been 1902. I may have so stated — it was somewhere around that time.

Q. Is there any way by which you can refresh your recollection about the years? A. Very easily. It is in the records of the Metropolitan Securities Company, which were before the Public Service Commission.

Q. The evidence was given before them, was it? A. No, they didn't want anybody that had the evidence. They didn't want anybody that knew anything.

Q. Well, we want information. If you will tell me the proper party to subpoena, I will issue a subpoena for the book. A. You need not subpoena anybody. I can tell you.

Q. Do you know who has the custody or control of the book to which you refer? A. I do not.

Q. Was it a ledger or a cash book? A. I didn't keep the book. I couldn't tell you.

it was in a book. Do you mean you infer that it or did you see it? A. I would not have to infer. It appears in the Public Service record if it was not in

your good you to say they didn't wish to discover any before didn't take it? A. I said they didn't wish to see it before them who knew about the situation.

Will you endeavor to secure the book. Can you now tell me who was connected with the properties, that received the money? A. I can tell later on, definitely. It is in my mind now.

Will you refresh your recollection and let me know? A.

Will you say you think you contributed approximately to the Democratic State Committee, that is, the Metropolitan, or 1905? A. Somewhere around there.

Who requested you to make that contribution? A. It was at the same time.

Who was the man who told you — A. I didn't say man, I

was talking about the same parties — thank you for the correction — I had requested you to send the money to the Republican State Committee, also requested you to send the money to the Democratic State Committee? A. That is right.

Did you make any contribution at that time to any other party or committees other than the Republican State Committee or the Democratic State Committee — the Metropolitan? A. I haven't any recollection of any.

Will you make any contribution to either the Republican State Committee or the County Committee of the City of New York, or to Tammany Hall, in the year 1902, or the Metropolitan? A. Well, I have no distinction in my mind — I am a railroad man, and not a politician. And I don't make these distinctions between —

Between the State Committee and County Committee? Of course, I have heard of Tammany Hall, have you not, and you have heard of the Republican County Committee, have you not?

You are acquainted with these two organizations, are you not, or, at least, have knowledge of their existence? A. Yes.

Q. Well now, do you think that in 1902 or 1903, whichever year it was when you made this contribution to the Republican State Committee, and also to the Democratic State Committee, whether you made any contributions to the Republican County Committee, or to Tammany Hall? A. I don't.

Q. Well now, we have that year, the year 1902 or 1903; you say these contributions had continued to be made by the Metropolitan since 1893. Do you recall any other years as to the amounts? A. No, I haven't any specific knowledge.

Q. Can't you recall any other occasion when the Metropolitan made contributions to any political party other than this one year — not as to amounts, but as to the fact of contributions. You have stated that they made them every year from 1893. Can you recall the circumstances of any contribution in any other year, other than the one you have just indicated? A. I would not want to be specific on that.

Q. Well, be general, then. I don't want to ask you for so long ago to remember specific years, but tell me other years if you can remember amounts contributed and to whom they were contributed? A. I don't know to whom they were contributed.

Q. Well, other years, the amounts that were contributed in other years? A. I would not want to be specific on that.

Q. Well, will you be general about it, then. Give us some idea? A. There have been contributions that I stated as a general proposition. You asked me what I knew about, and I told you specifically.

Q. Yes, for that one year, and I have asked if you could tell me other years? A. I cannot, because I told you the only one that I had to do with.

Q. Did you have anything to do with it in any other year? A. I don't recall it.

Q. Now, these withdrawals from the funds of the Metropolitan will certainly appear, will they not, in the books of the Metropolitan? A. I don't know.

Q. Do you think it was the policy of the officers of the Metropolitan not to have these items appear in their books? A. There are a great many ways of making contributions without appearing in the books.

Q. What are some of those ways? A. Oh, very well known, dealing in stocks and things of that kind.

Q. Yes, we have discovered that in the few days we have been at work. I will come to that later. Now, do you recall any contributions made by the Metropolitan by dealing in stocks? A. I cannot be specific about that, I know there were some.

Q. Were they made to political organizations or were they made to individuals? A. So far as I know, to political organizations.

Q. And through brokerage houses, I assume? A. I can't say as to that because I did not handle these questions.

Q. Who did handle them for the Metropolitan? A. I don't know.

Q. During the time you were connected with the Metropolitan? A. I don't know.

Q. Can't you give us any idea as to who had charge of that department of the work? A. No.

Q. Can you give us any idea with reference to what brokerage firm may possibly have been instrumental in aiding the Metropolitan in making these contributions? A. I cannot.

Q. But you think there were transactions made through brokerage firms? A. I think there were.

Q. Well, now, will you search your recollection just for a moment and see if you cannot give us some suggestions that would aid us in locating the firm? A. Was that a question, Judge?

Q. Yes. I say, can you, by a moment's reflection, recall any brokerage firm through which these transactions passed, because that would aid us in refreshing your recollection as to transactions? A. I cannot.

Q. Do you know where the books of the Metropolitan for the years, say 1893 down to the time that you severed your connection with it, are? A. Some of them are up at 621 Broadway, I suppose.

Q. Do you know where the others may be found? A. According to the history of the Public Service Commission there were books destroyed.

Q. Which covered those periods? A. Very largely.

Q. Well, now, do you recall whether or not any of these contributions made by the Metropolitan to political parties during

those years were entered in accounts, say for instance like "Construction account," or other accounts with such designations, for the purpose of concealing the contributions? A. I don't know where they were entered.

Q. You were president of the company, weren't you? A. I was.

Q. Well, did you have no knowledge of the transaction by design, or merely in the ordinary transaction of the business of the company? A. Merely that I didn't keep the books.

Q. Well, take this \$25,000 contribution, and the \$17,500 contribution in the years 1902 or 1903, now, how was that withdrawn from the railroad company? A. Well, it was not a railroad company.

Q. It was a securities company? A. Yes, sir.

Q. How was that withdrawn from the securities company? A. By check.

Q. Who made the check? A. I did.

Q. On what bank? A. I don't know. We had a number of banking accounts, I don't know what bank it was on.

Q. Do you think you could recall? A. Why, I could easily, yes.

Q. Will you? A. I will.

Q. Do you recall having an account with the New Amsterdam Bank? A. I had a personal account with the New Amsterdam Bank.

Q. That was entirely personal, was it? A. It was personal so far as I was concerned.

Q. Were any withdrawals made from that account by you for political purposes? A. There may have been.

Q. Were those personal contributions or contributions for the corporations with which you were connected? A. If they were in there they were for the corporations.

Q. Then this was not entirely a personal account in the sense that it was an account where funds were kept and used for your personal purposes? A. I didn't say there were any such things. I say, if there were.

Q. What is your best recollection as to whether there were or not? A. I have an idea that some checks went through my accounts, I won't say they were for political purposes at all, but there were checks that went through my account.

Q. For purposes connected with the railway companies with which you were connected? A. Yes, sir.

Q. Why did they go through your personal account? A. Well, there were a good many instances where the company wanted to acquire minority stock in the railroads, that it was impossible for the railroad company to buy. There was a series of transactions of that character where I bought the stocks and then turned them over to the railroad company.

Q. Now, it appears from the evidence here — I don't want to — there are only a few minutes left before adjournment — I don't want to continue generally the subject which we have been discussing, to wit, the political contributions, I will come back to that later, but just incidental to this account in the New Amsterdam Bank, for the purpose of refreshing your recollection I will say that it appears by the evidence here that on April 17th, 1900, you drew a check for \$3,000 on your personal account in the New Amsterdam Bank to Ellingwood & Cunningham, and that that check was deposited with Ellingwood & Cunningham, and that they transferred \$300 to Louis Bedell, who was then chairman of the Committee on Railroads in the Assembly; \$2,375 to Senator Goodsell, who was a member of the Railroad Committee in the Senate, and who a few days before had bought 200 shares of New York Transportation which cost just \$2,375, and that \$325 was deposited in the account of Mr. G. Tracy Rogers. Now, does that refresh your recollection as to the fact as to whether or not you made checks on your personal account for political purposes? A. It does.

Q. And what were the facts, as we are now on this item, what were the facts with relation to that transaction? A. I know nothing whatever about the transaction, save that a number of times I loaned G. Tracy Rogers money.

Q. Did you loan him money on April 17th, \$3,000? A. I don't know whether I did or not.

Q. Well, was that an item that would readily escape your memory? A. Very readily, \$3,000 would.

Q. Well, I couldn't say that for myself. \$3,000 — it was drawn to the order of Ellingwood & Cunningham. Can you give me any explanation as to why, if you were lending G.

Tracy Rogers \$3,000, the check would be drawn to the order of Ellingwood & Cunningham? A. I would like to see the check before I testify on it.

Q. Do you know any reason why the proceeds of that check were credited to the account of Mr. Bedell in the sum of \$3,000 to Mr. Goodsell in the sum of \$2,375, being the purchase price of this 200 shares of transportation, and \$325 to Mr. Rogers? A. Absolutely no.

Q. Well now, of course, if you had the check, you could tell to whose order it was drawn? A. Yes, sir.

Q. And you received your return vouchers, of course; now, will you kindly, as the time of adjournment has arrived, will you kindly bring with you on next Wednesday, when our hearings will be resumed, your vouchers showing this check? A. I will not.

Q. Have you your vouchers? A. I have not.

Q. What has become of them? A. In the ordinary course of business, they have been destroyed. I don't keep personal vouchers for ten years.

Q. Then when you told me that you would like to see the check, you knew at that time that the check was not in existence, did you not? A. I know that I want to see that I drew a check to Ellingwood & Cunningham before I will admit it.

Q. When you told me that you wanted to see that check, you knew at that time it was not in existence? A. I didn't know but what you had it. You were very definite in stating that it was drawn to the order of Ellingwood & Cunningham, and I supposed that you had the check.

Q. When you knew that the vouchers were returned and that you had destroyed them, how did you infer that I had it? A. I supposed it was in Ellingwood & Cunningham's record, if you are so sure it was to the order of Ellingwood & Cunningham, they must have had my check.

Q. Yes, but that check was drawn on the New Amsterdam Bank to their order, and it would go from them to the New Amsterdam Bank, and from the New Amsterdam Bank to you. A. How do you know it was drawn to their order?

Q. I am not under examination. A. Yes, you are when you

are trying to place me in the position of destroying evidence. I say, until I see the check, no man living can make me believe that I ever drew a check to the order of Ellingwood & Cunningham. You haven't any evidence that I did so.

Q. I was not trying to place you in the position of destroying evidence. You stated yourself that you had destroyed the vouchers. I inquired where it was, and when I asked you if it was drawn to the order of Ellingwood & Cunningham, you said you would like to see the check. I could not comply with that request, because you knew then, as I did not know, that the check had been destroyed. A. I assumed that you had the check from the fact of your stating that it was drawn on Ellingwood & Cunningham. How could you make that statement if you didn't have the check?

Q. I will endeavor to refresh your recollection later in regard to that, if I can. A. I think it is only fair that you do that now. You have placed this before the public as if I had drawn a check on Ellingwood & Cunningham. Now, I want to know what proof there is. I think that is only fair to me.

Q. You stated to me that you would like to see the check, and you knew at the time that you had destroyed the check. A. I say that you cannot say publicly that I drew a check to the order of Ellingwood & Cunningham, without you can produce that check. I never recollect having drawn a check to the order of Ellingwood & Cunningham.

Q. Did you draw a check to Ellingwood & Cunningham? A. I should say absolutely no.

Q. Is that from recollection or just merely from presumption? A. From a clear recollection that any checks that I gave that would have gone in that account were checks to G. Tracy Rogers.

Q. Was this \$3,000 drawn to G. Tracy Rogers? A. It must have been if it came through that account.

Q. Did you never draw a check to Ellingwood & Cunningham? A. Never, to the best of my recollection.

Q. Do you positively know whether you did or not? A. I can't state to-day, in a series of checks.

Q. If you had not destroyed your vouchers — you have destroyed them in the ordinary course of business, I am not intimat-

ing otherwise — if you had not destroyed your vouchers, you would have known positively, would you not? A. I would.

Q. I will endeavor, if possible, Mr. Vreeland, to refresh your recollection later in regard to the form of the \$3,000 check. Why were you paying \$3,000 to Rogers at that time? A. Rogers and I have been very good friends for a good many years. A number of times when Rogers was in New York and wanted money he would borrow money of me. I let him have it then and if he wanted it to-day he could have it.

Q. Did he pay it back? A. Yes, sir.

Q. When? A. I don't know; but I know he don't owe me any money.

Q. You kept books of account? A. In those days when accounts were not large enough to make it worth while.

Q. This \$3,000 item which you said would readily escape your recollection would indicate that perhaps your accounts were large would it not? A. No.

Q. Do you recall when he paid it back? A. I do not, except in a general way that I know a number of times I let him have money and he always paid it back.

Q. Did he state what he wished the money for, did he state any specific purpose for which he wished to use the money when he received the \$3,000? A. He did not. Why should he, coming and asking a friend for \$3,000.

Q. I don't know why he should, but sometimes when a man comes and asks another man for a loan, he says, I have an obligation coming due, or I am buying a piece of property for which I wish to pay, and wish you would let me have \$3,000. Did he state anything to you as to the reasons why he wished it? A. I do not recall that particular instance, but I know there were instances when Mr. Rogers was in New York, and his office was in Binghamton, he wanted some money, and he came to me and got it. I did not ask him what he was going to spend it for.

Q. He did not tell you that \$300 of it was to go to Bedell, \$325 to himself, and \$2,375 to Goodsell, did he? A. I never heard of anything of that kind until I read the transcript of it in the papers in the last few days while this investigation has been going on.

Q. I show you the cash book of Ellingwood & Cunningham which has been offered in evidence and call your attention to an item entered under the date on which this check for \$3,000 was drawn which was deposited to your account and under it credit L. Bedell \$2,375, L. Goodsell \$300, G. T. Rogers \$325. Would that seem to indicate that your check was drawn to their account?

A. It would not.

Q. There is no entry in the books of Ellingwood & Cunningham — we find no entries in the books of Ellingwood & Cunningham of any check on that date having been endorsed by Mr. Rogers to your account nor credited to his account. Do you think from that it is a fair inference that the check was drawn to Ellingwood & Cunningham? A. I do not.

Q. Well, if it had been drawn to the order of Mr. Rogers and by him deposited in the ordinary course of business as these books were entered, it would show that it was deposited by Mr. Rogers, and would appear in his account, which it does not. That is all for to-day.

Chairman MERRITT: The Committee stands adjourned until next Wednesday at 10.30 o'clock in the morning. All witnesses will hold themselves liable to be here in response to the call of counsel.

Adjourned until Wednesday, September 21st, 1910, at 10.30 A. M.

EVENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, *September 21st, 1910* — 10.30 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman.*
HON. ALEXANDER BROUGH, *Vice-Chairman.*
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel.*
ISIDOR J. KRESEL, Esq., *Assistant Counsel.*

Chairman MERRITT: The Committee will be in order.

JOHN AUEN, JR., recalled:

By Judge BRUCE:

Q. Mr. Auen, on September 7th, which was the first public session held by the Committee, I examined you with reference to a certain ledger of the New Amsterdam Bank. You stated at that time that you were the bookkeeper for the Assets Realization Company, also for Mr. James W. McKennon, who was the shareholder agent for the New Amsterdam Bank. You also testified that you had made a search for this ledger, and that you

had been unable to find it. You promised to make a further search, and so did Mr. McKennon to me personally. Have you done so? A. Yes, sir.

Q. And have you found it? A. Yes, sir.

Q. Where did you find it? A. In the vaults of the Commercial Safe Deposit Company, Broadway and 41st street.

Q. I cannot hear you. A. The Commercial Safe Deposit Company vaults, Broadway and 41st street.

Q. When did you find it? A. Friday morning; last Friday morning.

Q. You testified on your former examination, I think, that you had already searched there for it? A. Yes, sir.

Q. Had you? A. Yes, sir.

Q. Was it there when you searched before? A. I could not find it.

Q. Where was it now when you found it? A. I found it on the top of the books that I had looked through when I was up there last.

Q. It was the first book on the top, was it? A. Yes, sir.

Q. Had you searched at this place for it prior to Friday? A. Yes, sir.

Q. Was it there? A. No, sir; I could not find it.

Q. And did you look through this pile of books where you found it, being the top book? A. Yes, sir; the same pile.

Q. And it was not there? A. Yes, sir.

Q. But you found it Friday morning? A. Yes, sir.

Q. And have you produced from that book a transcript of the account of Mr. Vreeland? A. Yes, sir.

Q. Let me have it. A. (Witness produces transcript of account.)

Q. This transcript that you have produced is from January 3rd, 1900, to May 23rd, 1900? A. Yes, sir.

Q. And you have previously produced the transcript for the remainder of the year 1900? A. Yes, sir.

Q. Will you kindly produce at the next hearing of the Committee a transcript of this same account from January 1st, 1901, down to and including the year 1903? A. Yes, sir.

HERBERT H. VREELAND resumes the stand.

By Judge BRUCE:

Q. Mr. Vreeland, you heard my examination of Mr. Auen with reference to one of the ledgers of the New Amsterdam Bank which contained your account? A. Yes, sir.

Q. Did you ever have anything to do with this ledger? A. Absolutely no.

Q. Never seen it? A. Never seen it, or never knew until I heard it here that the Committee was after the account.

Q. Now, in my examination held at the last hearing, Mr. Vreeland, on last Friday, you stated that you would say that it was ordinary routine business of corporations for a good many years to contribute to political parties, and I asked you if that was the custom of the corporations with which you were connected, and you said it was. I then asked that we come down to something more specific, and you said that in 1902 or 1903, the Metropolitan Securities Company had contributed \$25,000 to the Republican State Committee, and \$17,000 or \$18,000 to the Democratic State Committee. Now, can you tell me with reference to contributions for the year, say 1904, by the Metropolitan Securities Company? A. I do not recall that there were any contributions made by any of the companies after the year 1903. There was a general sentiment manifested on the questions of national campaign contributions that were recognized by legislative action in various States. There was a general sentiment in New York State by legislative enactment, by publicity, and so forth, against this practice; and it was decided that we would have no more to do with it, and since that time, to the best of my recollection, there have been no contributions.

Q. That is, since 1903? A. To the best of my recollection.

Q. 1904 was a presidential year; I simply wanted to recall that fact to your mind, to see whether or not that would refresh your recollection, to see whether any contributions were made in 1904. The act prohibiting contributions in this State by corporations was passed in the session of 1906. There had been such an act introduced, if I recall correctly — my memory might be at fault in that, and there had been a great deal of agitation upon the

subject as you have stated, prior to that time. Do you recall whether or not any contributions were made in 1904, Mr. Vreeland? A. Not to the best of my recollection at the present time, sir.

Q. Have any contributions been made by any of the corporations with which you are connected, to your knowledge, since the passage of the act of 1906? A. No, sir.

Q. You say that in view of the public sentiment adverse to contributions to political parties by corporations which had manifested itself by legislative enactment in other States, and which culminated in the act of 1906 in this State, and by reason of the agitation of the public mind upon that question, it was decided that no further contributions should be made by the corporations with which you were connected after 1903. Now, was that a decision by the executive boards of these corporations? A. It was not.

Q. Simply a decision by the heads of the companies? A. By the chief financial interests that controlled the companies.

Q. Which, I presume, were largely interested outside of the companies themselves; that is, that were not officers of the companies? A. They were outside of the official organization.

Q. Now take 1903 — 1902; you have spoken about this contribution by the Metropolitan Securities Company; during the time you were president of the Metropolitan Street Railway Company, what was the custom of the company with reference to political contributions? A. I have no specific knowledge, but from general knowledge, I think contributions were made.

Q. To any political party, or to the leading parties? A. They were made to the leading parties.

Q. That is, to the Republican party or the Democratic party? A. I so say; yes, sir.

Q. Was, in any year, to your knowledge, any discrimination made between the two parties in regard to contributing to one and not to another? A. Not to my knowledge.

Q. Were these contributions made in presidential and gubernatorial elections only, or were they also made during municipal campaigns? A. I have no specific knowledge of that.

Q. Do I understand you to testify that 1902 or 1903 was the only

year of which you had any specific knowledge of any contributions? A. That is the specific contribution with which I had to do, as a contribution.

Q. Now, I want to be frank, Mr. Vreeland; I want to know any knowledge you had of contributions in other years, whether you specifically had to do with it, or whether you had knowledge of it, although you may not specifically have had to do with it? A. I have already stated that there were contributions, but I have no knowledge of how they were made.

Q. Do you have any knowledge of the amounts? A. No, sir.

Q. None whatever? A. Not to the best of my recollection now.

Q. By what means were these contributions made? A. I could not answer that now.

Q. Well, did you have knowledge at the time, by which your memory could be refreshed with reference to the means by which these contributions were made either to local committees, State or national committees? A. I have no recollection now that is definite on any of them.

Q. You stated in your last examination that you thought perhaps you could refresh your recollection and tell me the parties who advised the contributions of \$25,000, and \$17,000, respectively, to the Republican and Democratic Committees in 1903. Have you refreshed your recollection? A. I would like to correct those amounts first; on looking them up there was \$20,000, and about approximately \$17,000, something like that. I am not accurate because I have not the accurate information.

Q. Well, those records appear in the records in the Metropolitan Securities Company, would they not? A. They would not.

Q. And why not? A. They were made by the borrowing of money on the note of the Metropolitan Securities Company, and carried in that shape for a while, and then paid off by the check of the Metropolitan Securities Company.

Q. And who made the loan? A. I did.

Q. Personally? A. To the best of my recollection I did it personally, yes, sir.

Q. And did you transfer the funds personally to the committees, the respective committees? A. I did not.

Q. Do you know who did? A. I am not definite enough in my recollection to state.

Q. Well, what would be your best recollection? A. I am not definite enough on it to make any statement.

Q. Did some officer or representative of the Metropolitan take the money to the Republican State Committee, and the same officer or some other one take it to the Democratic State Committee? A. I am not sure on that now, Judge.

Q. Well, now you said, Mr. Vreeland, that you advanced it yourself. To whom did you give it? A. To some messengers or some representative or something — I can't — I would have no hesitancy in saying if it was in my mind — but I can't from recollection now.

Q. Was it a messenger or representative of the Metropolitan Company, or a messenger or representative of the political organizations? A. That I am not sure of now.

Q. Do you recall whether or not you have heretofore testified with relation to this fact, giving the name of the party to whom you delivered it to be delivered to the Republican State Committee? A. I recall having testified.

Q. Do you recall what you testified? A. Not definitely.

Q. Do you recall whether or not you testified that the money was delivered to Mr. Quigg, to deliver to the Republican State Committee? A. I think that is right.

Q. Didn't you so testify before the grand jury? A. Now that my memory is refreshed, I think I did.

Q. Now, will you tell me who the messenger was — was Mr. Quigg at that time in the employ of the Metropolitan Securities Company? A. Yes, sir.

Q. Then he was the representative of the company who delivered the money to the Republican State Committee. Now, what representative of the company delivered the money to the Democratic State Committee? A. I don't know. Somebody came and got the money.

Q. Somebody from the committee? A. To the best of my recollection that was it; yes, sir.

Q. Was it in cash or was it by check or draft? A. Always in cash.

Q. Now, if I recall your evidence correctly, given at the last hearing, you stated that the entries indicating these transactions would show in the record of the Metropolitan Securities Company. You say now they would show in the nature of a loan. Will that loan appear in the books of the Metropolitan Securities Company? A. No, sir. I stated when you asked me about it that I made that loan personally, on the note of the Metropolitan Securities Company, and it was afterwards taken up by the check of the Metropolitan Securities Company, and that is the first time the transaction appeared in the books of the Metropolitan Securities Company, showing the amount and interest.

Q. In payment of the loan? A. In payment of the loan.

Q. That would appear, I presume, in the books of the company? A. I have the book, it is there.

The WITNESS (addressing Judge Bruce): Is there any objection to my speaking to counsel?

Judge BRUCE: None at all.

(Witness left the stand to consult with counsel.)

Q. Now, this contribution was made, Mr. Vreeland, in 1903, was it? A. I am not positive.

Q. Well, the first entry of it appears in "Cash Book No. 1, Metropolitan Securities Company," page 55, as follows:

"April 22nd, Morton Trust Company, 271, \$37,492.56." That was the amount of the loan and interest, was it? A. Yes, sir.

Q. And on the same date there is your voucher on the Morton Trust Company, drawn by the treasurer of the Metropolitan Securities Company for \$37,492.56 — is that correct? A. That is correct.

Q. Now, in the voucher register No. 1 of the Metropolitan Securities Company, under date of April 22nd, we find the following entry, do we not: "271, April 22, 1904, Morton Trust Company, \$37,492.56, disbursements awaiting distribution, folio 60." What is folio 60? A. I don't know, unless it is from the cash register.

Q. Who was the bookkeeper at that time who could explain the method of keeping the books? A. I am not sure who it was in 1904.

Q. Do you know what the entry "Folio 60" indicates? A. I do not.

Q. And who connected with the company now would be able to give us that information? A. I am not sure, because I don't know who made the entry.

Q. Who now has charge of the books of the company, the book-keeping? A. E. W. Sayre.

Q. Now, this item first appears in books of the company April 22nd, 1904. When do you think the contribution was made, in 1902 or 1903? A. I am not sure about it at all. I stated the other day it was in 1902 or 1903, and I am not sure.

Q. Are there any other entries or records of the Metropolitan Securities Company which might give us that information? A. There are none to my knowledge.

Q. Now, you stated there were various methods of making these contributions, by dealing in stocks, etc. Now, Mr. Vreeland, will you give me what information you have, for the benefit of the Committee, in regard to these methods of making contributions to political parties? A. I can't be specific, but I can give you my best general recollection. There were a number of times that I was called upon to take up stocks that had been carried by different people that were taken up by the Metropolitan Company.

Q. Now give us those instances which you can recall? A. I am not definite on that, I don't want to state.

Q. Well, give us one? A. It is too general in my mind to state. I merely make the broad proposition that there was something of the character.

Q. Now, let us see if you can take up some line that might refresh your recollection. Give me the names of the brokerage houses where those stocks were held that you took up? A. I can't do that from memory.

Q. Were they large amounts? A. I can't be sure as to that.

Q. \$10,000 or over? A. I should say more.

Q. Twenty thousand or more? A. I would not say as to that.

Q. Would you think they were as much as \$20,000 in any specific instance? A. I think there were cases where they were larger.

Q. Larger than \$20,000? A. Yes; sir.

Q. Now, how large, Mr. Vreeland, to the best of your recollection? A. I would not want to testify on such a broad proposition, Judge.

Q. Would you want to say as high as \$50,000? A. I can't say now.

Q. You say more than \$20,000, but you would not like to say whether it was as much as \$50,000? How far would you feel you could safely go and feel that you were within the facts? A. I don't feel that I am testifying as to facts now, because I am qualifying my proposition with "to the best of my recollection," and I —

Q. Suppose I make one more figure, would you say it was \$30,000? A. I should, qualifying it by recollection, that there may have been instances of that character.

Q. Well now, can't you remember any one of the brokerage houses where you took up stocks, Mr. Vreeland? A. I don't think it would be fair to make a statement on a guess, and it would be a guess.

Q. Now, by what method did you take up these stocks? Did you go to the brokerage houses and make a payment and take up the stock? A. No, where there was any stock taken up it was sent to the company and taken.

Q. And the payment made from your personal account or from the general account of the company? A. From the general account of the company.

Q. Would those transactions appear in the records of the company? A. I don't think they would.

Q. Did this relate to the Metropolitan Street Railway Company and also to the Metropolitan Securities Company? A. To the Metropolitan Street Railway Company.

Q. And not to the Metropolitan Securities Company? A. I never recall anything of the kind in connection with the Securities Company.

Q. Do you recall anything of the kind with reference to the Interurban or any other companies which you have been connected with, other than the Metropolitan? A. No, sir; I don't recall any other.

Q. Can you testify, Mr. Vreeland, as to the fact as to whether

or not any other company with which you have been connected, other than the Metropolitan Street Railway Company, took up stocks in the manner which you have indicated? A. I cannot.

Q. Now, going over some of the large brokerage houses for the purpose of refreshing your recollection, and not for the purpose of casting any aspersion on those houses whatsoever, do you recall whether or not the company ever took up any stocks with Strong, Sturges & Company? A. It would be impossible for me to distinguish between the regular transactions with brokerage houses and special transactions, because the company and the allied companies at various times have had transactions with a large number of houses in New York.

Q. Well, the company had an account with Strong, Sturges & Company in 1899, had it not? A. They had an account with Strong, Sturges & Company for some time, for some period while I was connected with the company, I can't state what year.

Q. Did they in the same year have an account with the firm of Moore & Schley? A. The company had accounts with Moore & Schley at various times covering a period of years, that had to do with stock and bond transactions in connection with its business.

Q. Would all of these transactions, including the regular stock transactions, together with these special transactions, appear in the records of the Metropolitan Street Railway Company? A. For the reason that I stated the other day, it is common public property, from the Public Service record, the detailed books of the Metropolitan Street Railway Company, it was testified, were not extant.

Q. And when did the evidence before the Public Service Commission — I am not familiar with it — show that they were destroyed or had disappeared? A. At the time of the public investigation that was held in 1907, I think.

Q. That is known as the Ivins investigation, it is sometimes called? A. I should call it the Wilcox investigation.

Q. Mr. Ivins was the counsel, was he? A. He was the counsel, yes, sir.

Q. Now, do you think, Mr. Vreeland, that these transactions, both the general and special, would appear in these books if they were extant? A. I don't think they would, only in the general

ledgers and so on of entries. Of course, it will appear that there had been transactions.

Q. Would the nature of the transaction be indicated other than that it was a mere stock transaction? A. Well, in the many years I have been connected with railroading, both steam and street, my side of the business has been operating and construction. I never have claimed and don't claim to-day to know anything about accounts, so I can't testify.

Q. Well, do you recall having, yourself, seen any entries in the company's books of these transactions of which you had knowledge? A. Not in detail; no, sir.

Q. Well, in general? A. Well, the summarizing of the company's operations from year to year would appear in the summary that would be presented to the board.

Q. Now, Mr. Vreeland, do you recall any of the stocks which were taken up by the Metropolitan Street Railway Company in the manner you have indicated? A. There were transactions in Electric Storage Battery stock. I am stating nothing new now, Judge, it is in the Public Service record.

Q. Well, it is new to this Committee, I think. A. I only wanted to qualify it in that way for our other friends that might be alert on it.

Q. What other stocks besides Electric Storage Battery? A. I don't recall it.

Q. Do you recall about the Electric Vehicle Company? A. I don't ever recall that the Metropolitan Company ever had any interest in the Electrical Vehicle Company.

Q. Did it ever have any special interest for the purposes which you have indicated? A. No, sir, not to my knowledge.

Q. Did it ever have any interest in the New York Electric Vehicle and Transportation Company? A. The Metropolitan Street Railway Company did not.

Q. Did it ever have any special interest for the purposes which you have indicated, to wit, taking up stocks for the purpose of making contributions either to individuals or to political parties? A. Not to the best of my recollection, sir.

Q. Did the Metropolitan itself ever have any interest in the Electric Storage Battery? A. It did.

Q. Other than the special interests? A. It did.

Q. Do you remember how extensive, or do you recall how extensive those interests were? A. There was a purchase in the open market, by resolution of the Metropolitan directors at the time of the application of Storage Battery to 34th street, of quite a large amount of stock which appears, I can't state the amount, but it appears in the Public Service records.

Q. Well, do you recall the year, Mr. Vreeland? A. Not definitely, but I should say approximately somewhere around 1900.

Q. Now, you say that the Metropolitan Company did take up some stock of the Electric Storage Battery for either individuals or political parties. Is that correct? A. I did not.

Q. Well, did they? A. There were stocks taken up. Who they were carried for I know nothing about.

Q. Did you ever know? A. I did not.

Q. And do you recall whether Electric Storage Battery was taken up and carried for some individuals whom you did not know? A. Distinguishing between the Electric Storage Battery bought by the company for its own account and this special account, there was.

Q. And do you remember in what amount? A. I do not.

Q. Well now, I note a transaction of Strong, Sturgis & Company, May 1st, 1899, amounting to \$300,000. Do you remember whether or not that was Electric Storage Battery? A. No. To the best of my recollection now, that was the purchase of the Fifth Avenue Coach Company.

Q. And that was solely for the Metropolitan itself? A. It was.

Q. Well now, the Fifth Avenue Coach Company, was that the company that afterwards was known as the New York Electric Vehicle and Transportation Company? A. No, sir. It is known as the Fifth Avenue Coach Company to-day.

Q. It appears from the evidence here, Mr. Vreeland, that the New York Transportation Company owned the entire capital stock of the Metropolitan Express, Park Carriage Company, Fifth Avenue Coach Company, Metropolitan Cab Company and Taxicab Company. Is the Fifth Avenue Coach Company mentioned here the same as the one you have designated? A. It is.

Q. Then the entire capital stock of that company was owned by the New York Transportation Company. This purchase was on May 1st, 1899, through Strong, Sturgis & Company, you think, of \$300,000. Was that the acquisition by the Metropolitan of the stock of the Fifth Avenue Coach Company? A. I think that was the transaction; yes, sir.

Q. Did it later transfer that stock to the New York Transportation Company? A. It did not transfer it — it sold it.

Q. To the New York Transportation Company? A. To whatever the company's name was at that time.

Q. Do you recall when? A. Not very long after it acquired it, and it was the purpose of its acquisition to turn it over to that interest.

Q. Now, on December 19, 1899, I find a transaction with Moore & Schley & Company, \$264,474.24. Do you recall whether or not that was Electric Storage Battery or New York Transportation, or any of the companies which it controlled? A. The company had a great many transactions with Moore & Schley, notably in the purchase of the majority of the capital stock of the Third Avenue Railroad, and purchases of stock. Judge, it would be impossible for me to tell what any specific transaction was.

Q. I notice again in 1900, January 10th, the purchase through Moore & Schley of Storage Battery, \$50,000; January 13, purchase through Moore & Schley, \$80,000 worth of the capital stock of the Storage Battery, and on the 17th, \$70,000, making in all \$200,000 of the Electric Storage Battery Stock purchased during January, 1900, by the Metropolitan. Now do you recall whether any of that stock was purchased by or carried by the Metropolitan for individuals, as you have indicated? A. I should judge from the date of that, of those transactions, that it was at the time that the company was acquiring a lot of Storage Battery stock for its own treasury.

Q. Does it refresh your recollection if I recall to your mind that in March, 1900, in the latter part of March — the 16th of March, Senator Goodsell introduced in the Legislature the bill extending the franchise of the New York Transportation Company, which passed thirteen days later — on the 29th — passed and went over to the Assembly and passed there on April 5, the day

before the Legislature adjourned. Now do you recall whether or not the Metropolitan was carrying for individuals any of the stock of the Electric Storage Battery during the session of the Legislature at which that bill was passed? A. I have made no statement that the Metropolitan was carrying stock for people. I have stated that the Metropolitan took up stock.

Q. Well, I will substitute the word took up. Did it take up any of the stock of the Electric Storage Battery for anyone, any individuals, during the session of the Legislature of 1900, at which this bill was passed? A. I could not testify from recollection.

Q. Now, has anything which I have said — which has been very meagre, I admit — in any wise refreshed your recollection, Mr. Vreeland, as to either the person — or, you said you did not know the persons — as to the brokerage houses through which this stock was taken up and carried by the Metropolitan in the manner you have indicated? A. Well, I could not state, because there are so many houses, but I know that there were a great many transactions in Electric Storage Battery at the time the company was purchasing stocks, and I think it would naturally have gone through Moore & Schley's concern, had there been these other accounts taken up. But I am only giving you that there in answer to your question, as best I can.

Q. What other houses other than Moore & Schley did the Metropolitan do business with? Perhaps we can get at it in that way, if you can recall. A. I have already testified, Judge, that practically every large house in the city of New York, the Metropolitan and its allied interests, covering a great period of years, have had a very large number of stock issues and bond issues, and the handling of large amounts of securities and the purchase of large amounts of securities of subsidiary roads. There was over 90,000 shares of Third Avenue stocks bought in the open market for the company. Now, I cannot distinguish between, I would say practically every large house in New York, and I would say that with this explanation of the character that the Metropolitan Company has had —

Q. This Committee is very anxious to gather all the information it can, Mr. Vreeland, with reference to the methods by which

contributions were made either to political parties or individuals for the purpose of influencing political action or legislative action, and you have indicated that one of these methods was through brokerage houses. Now can you give us any other facts which will be of aid to the Committee in developing to the fullest extent these methods which you have indicated? A. Nothing more than I have given, Judge.

Q. Now let us take up the accounts, if you can recall even generally the stocks carried by the Metropolitan for individuals, or taken up. Would you say as high as \$250,000? A. In gross amount — no specific instance, but in gross amount I should say it would aggregate that.

Q. Would you say that it would be as much as 100,000 in any one specific instance? A. No, I would not say that.

Q. 50,000? A. I would not say.

Q. Now you spoke not only of this method but also of other methods. What other methods had you in mind other than through brokerage houses? A. I don't recall stating other methods. If I did, what I had in mind was the cash contributions.

Q. At page 527, you say there are a great many ways of making contributions without it appearing in the books, dealing in stocks and things of that kind. Now did you have in mind any other methods, other than cash contributions and the taking up of stocks in the manner you have indicated? A. Not as a corporation proposition.

Q. Well, as an individual proposition? A. I don't recall personally having had anything to do with politics.

Q. Well, when you say not as a corporation proposition, what reservation did you have in mind? A. I had in mind what has been common report over the United States for the last ten or fifteen years, of contributions to national and state and local organizations, that that was a common practice. And I have read many times of the various methods that were used for making these contributions. That is a general proposition.

Q. Did you have knowledge of any other method than the ones you have indicated, to wit, cash contributions and the taking up of stock? A. No, I should say not.

Q. Now, Mr. Vreeland, did you know about the introduction of this bill of Senator Goodsell's in March, 1900, with reference to enlarging the franchise of the New York Transportation Co.?

A. I did not know of it as enlarging the franchise of the New York Transportation Company, but as interested in transportation in New York city and protecting the interests of the property I represented, I knew there was such a bill in the interests of the Fifth Avenue Coach and Transportation Co.

Q. And did you know of its provisions? A. I undoubtedly did. That was my job.

Q. And did you watch its progress and note its progress through the Legislature? A. I had no connection with that.

Q. I say did you — not that you had a connection with it — I asked you if you watched its progress and note its progress through the Legislature? A. I did not.

Q. Did you know of its becoming a law later? A. I did.

Q. Now to go back a minute, I recall that I did not inquire — or at least you did not state — perhaps I did not inquire the names of the parties who suggested these contributions in 1903 of \$37,000? A. My mind is not clear enough to testify on that. I said I was one.

Q. Do you remember any other parties that suggested it other than yourself? A. I have no recollection now, Judge.

Q. Do you recall whether or not you had in mind any effect that the passage of this bill of Senator Goodsell's in 1900 might have on the stock of the Electric Storage Battery or the New York Transportation Co. A. I recall that I only had in mind interests of the Metropolitan Street Railroad Company, their and competitive properties.

Q. Well, did you have anything to do with the passage of the bill? A. No, sir.

Q. Did you have anything to do with its inception, drawing or drafting of the bill or the framing of it? A. No, sir.

Q. Did you ever have any dealings personally in New York Transportation? A. You ask me now as a person, or corporation?

Q. Well, we will take it personally first. Did you personally have any dealings in New York Transportation? A. I never

recall of having owned a share, except at the present time I am a director of that company, and there are qualifying shares in my name.

Q. The Metropolitan, of course, at that time held stock of that company, did it not? A. I don't think that the Metropolitan interests ever held any stock of the New York Transportation Company until within the past four or five years, when it purchased a large amount.

Q. Then I understand your evidence to be, that neither you nor any of the companies with which you are connected had in 1900 or about that time any dealings in New York Transportation? A. That is the best of my recollection.

Q. Did you know Mr. Nixon, the Speaker of the Assembly? A. I did.

Q. Of course, the Metropolitan had stock in subsidiary concerns, such as the Fifth Avenue Coach Co., and the other companies I have mentioned? A. The Metropolitan at the time I stated that Strong-Sturgis transaction, but the whole of the capital stock of the Fifth Avenue Coach Company, and it turned over the whole of the capital stock of the Fifth Avenue Coach Company for cost and interest, to the New York Transportation Company a short time afterwards. No one has ever owned any portion of that stock save some one of the interests, as it has been *en bloc*.

Q. Did you know Mr. Nixon, Speaker of the Assembly in 1900? A. I did know him.

Q. Did you know him at that time? A. I did.

Q. Did you ever have any conversation or communication with him with reference to New York Transportation? A. I may have. I don't know now.

Q. Now, if you were not interested in it, and the Metropolitan was not interested in it, and you had no connection with the bill, what would be the occasion of your having conversations or communications with Mr. Nixon in reference to the stock? A. By reason of my position in the financial world and my knowledge of business interests over the country generally, there is hardly a day in the year but what I am asked my opinion on properties with which I have never had any connection, or nobody associated with me has ever had any connection.

Q. Now, do you recall Mr. Nixon ever consulting with you in regard to New York Transportation, whether or not it would be a good stock to deal in or hold? A. Well, it would be a natural thing for him to do, but I don't know as he ever did it. I would not say that he did it.

Q. What was the attitude of the Metropolitan, if it had any, towards this bill; was it favorable or unfavorable? A. I don't think that the Metropolitan had any interest one way or the other, as demonstrated by the fact that these transactions have not any value to-day.

Q. Did you know at that time that Mr. Nixon was interested in New York Transportation as owner of the stock? A. I do not recall ever having heard anything in connection with Mr. Nixon or anybody else at Albany being interested in New York Transportation stock until I read here in the transcript of this hearing.

Q. You are also acquainted with Mr. Louis Bedell who was chairman of the Railroad Committee in the Assembly in 1900, and several years afterwards? A. I have been acquainted with him a good many years.

Q. And also Senator Goodsell, who was a member of the Railroad Committee in the Senate? A. I never had any acquaintance with Senator Goodsell, and I would not know him if I saw him now.

Q. It appears from the evidence here — oh, were you acquainted with the firm of Ellingwood & Cunningham, brokers, in Wall street? A. I knew there was such a firm.

Q. Did you know Mr. Cunningham or Mr. Ellingwood? A. I do not recall that I did, at any period while that firm was in existence, although I knew there were such men. I know Mr. Cunningham to-day.

Q. And you were acquainted with Mr. Rogers, of course, as you have stated; did you know at that time that he was a special partner in that firm? A. I did.

Q. Now, on May 7th, 1900, after the adjournment of the Legislature, and after the passage of this bill, and after it had become a law, Mr. Cunningham wrote Mr. Goodsell as follows, as appears by the evidence here: "Hon. Louis Goodsell, Goshen, New York. My dear Louis: F. N." — which you will note would be the in-

initials of Mr. Fred Nixon — “has been told by H. V.” — which, Mr. Bedell testified, were doubtless your initials’ — “this morning that he considered New York Transportation all right, and advised him to hold it. I tell you this for your comfort, and also that you may advise Mr. Taggart as to what is the best thing to do.” “Yours very truly.” Signed by Mr. Cunningham. Do you recall this conversation with Mr. Nixon — or did you have the conversation first? A. I had a great many conversations with Mr. Nixon.

Q. Do you recall such a conversation? A. I do not recall specifically such a conversation, but that would have been identically what I would have said to anybody had they asked me my opinion in regard to New York Transportation at that time.

Q. Now, to return to the Street Railway Association of the State of New York. If I recall correctly your evidence, you stated that they had two sources of income, one from the regular dues of the association, and assessments made for its special purposes. Do you recall that the highest dues from any company in any one year amounted to \$600? A. I should say that was right.

Q. Now, do you recall how much the assessments were in any one year? A. No, I do not. I know that they were apportioned on the railroads of the State.

Q. On what basis? A. On the basis of their gross earnings.

Q. Isn't this correct: That regular assessments for legislative purposes were laid upon each member of the association on the basis of one-tenth of one mill on the gross earnings of the road?

A. It is true that there were assessments levied in some years on the gross earnings on some basis. I cannot state that —

Q. Wasn't there a regular assessment levied each year during the regime of Mr. Rogers upon that basis, giving the association two sources of income, the regular dues which in no case exceeded \$600, and an assessment annually of one-tenth of one mill on the gross earnings of each road which was a member of the association? A. There was such an assessment; whether it covered all the period you have stated, I could not state, Judge.

Q. And wasn't that amount afterwards increased during Mr. Rogers' regime to two-tenths of one mill on every dollar of gross income of any member of the association? A. I could not state, Judge.

Q. Do you recall that in addition to the regular dues and the regular assessments there were also from time to time special assessments for special purposes laid upon the members of the association? A. No, I could not differentiate in my mind between them.

Q. What was the largest amount the Metropolitan contributed during any of the years when you were connected with it, as assessments to the State Railway Association? A. I could not testify as to that. It was the proportionate amount, based upon the percentage of assessment that the road would pay with relation to its gross earnings, as all other companies did in the State.

Q. Would this refresh your recollection: It appears from the evidence here, that during the months of June and July, or a part of June and a part of July, to be exact, in twenty-nine days, there were collected in assessments \$25,000, forwarded by the treasurer of the company to the firm of Ellingwood & Cunningham. Now, does that refresh your recollection, Mr. Vreeland; with regard to the amounts that were paid in by the Metropolitan? A. No, it would not, Judge, because there was no particular time of year in which these amounts were paid, and one might run into another.

Q. Take, for instance, the year 1900: Do you recall what the Metropolitan paid in 1900? A. I do not.

Q. During those years you were both a member of the executive committee of the association and also president of the Metropolitan, were you not? When did the Metropolitan change to the Securities Company? I am in doubt about that. A. The Metropolitan never changed to the Securities Company. The Metropolitan went out of active operation in 1902. Its lines were leased.

Q. I say, during this time, take for instance, in 1900, you were a member of the executive committee of the association and also president of the Metropolitan? A. I would not have been a member of the executive committee if I was not president of the Metropolitan; they go together.

Q. That is true, as a matter of fact, isn't it? A. Yes, sir.

Q. Now, I show you a voucher which reads as follows: "Construction Department. Metropolitan Street Railway Company. Cable Building, 621 Broadway. To the Street Railway Associa-

tion, 621 Broadway, New York. Register Number, 6,119. 1900, May 4th. To assessments toward paying special expenses of current year, \$12,300.47. Paid on account, \$6,000; May 1st, 1900." Signed by the auditor, and also signed by the assistant to the president. And appearing at the bottom, the following: "October 24th, 1900. Received of Metropolitan Street Railway Company, \$12,300.47; Street Railway Association, State of New York, for payment in full of above account, Henry A. Robinson, Treasurer." Does that refresh your recollection as to the amount contributed by the Metropolitan in the year 1900? A. It evidently was contributed, but I do not think it is fair to show this, unless you show that every street railway in the State of New York that was a member of that association did likewise. It is not fair to put it on the Metropolitan.

Q. But this amount? A. Oh, I will testify to that, Judge. That is right.

Q. You were president of the Metropolitan at that time; that is correct, is it not? A. That is a correct voucher of the company.

Q. Yes, \$6,000 evidently paid May 21st, 1900? A. That is the notation; yes, sir.

Q. And the balance on October 24th, 1900? A. That is the way it reads; yes, sir.

Q. Making \$12,300.47? A. Yes, sir.

Q. Did you sign the checks for these contributions or assessments? A. I would not know, Judge, because they were duties that were assigned —

Q. I show you two vouchers, one for \$6,000 and one for \$3,000, one dated May 21st, 1900, and the other, September 1st, 1900. They were signed by you, were they not? A. They were; yes, sir.

Q. Both drawn to the order of the Street Railway Association? A. That is right.

Q. Making \$9,000 in all? A. Yes, sir.

Q. As the receipt is in full on October 24th, the other \$3,000 must have been paid later, I assume? A. I should say so; yes, sir.

Q. Now, did the Metropolitan pay any other assessments in 1900, than this \$12,300? A. I have no recollection of the Metropolitan ever doing anything in connection with the Street Railway Association, but what every other road in the State of New York did that was a member.

Q. Now, will you answer my question, Mr. Vreeland? Did the Metropolitan, in 1900, pay any assessments other than this \$12,300? A. I have no recollection on the subject, but I should say that the Metropolitan never paid anything but what was the regular assessment of the association.

Q. What I wish to get at is — I have now refreshed your recollection in regard to the \$12,300 — do you recall any further payments that year by the Metropolitan in addition to this? A. I do not.

Q. What was the greatest amount that the Metropolitan ever contributed in any one year, in the way of assessments, to this association? A. Whatever its proportion of the assessment of such a portion of a mill was on the street railroads of the State of New York that were members of the association.

Q. Do you know whether or not this assessment of 1900 was made for any special purpose, or was it for the regular legislative fund? A. I do not; no, sir.

Q. Now, do you recall what the Metropolitan contributed in the way of assessments in 1901; that would be the following year? A. I do not.

Q. What were the largest gross receipts of the Metropolitan in any one year, say from 1900 to 1905? A. The Metropolitan had no gross receipts after 1902, as its properties were leased. The average was around twenty millions of dollars, something like that, after it had all the property.

Q. Do you recall what its contribution was in 1901, Mr. Vreeland? A. No, sir.

Q. I show you a voucher entitled the same as the previous voucher shown you: "April 22nd, 1901, to payment on account of annual dues in Street Railway Association, \$7,000." Signed, examined and registered; signed by the auditor and approved for payment by the assistant to the president, bearing the receipt at the bottom of the treasurer, Mr. Robinson, of the Association, for the \$7,000, on April 23rd, 1901. Does that refresh your recollection in regard to that payment? A. It does not refresh my recollection, but that is what the voucher states.

Q. And did you draw the check for that payment? A. I did not draw it; I signed it.

Q. I show you a check, April 22nd, 1901, to the order of the association, \$7,000, signed by you as president and by Mr. Charles E. Warren as secretary? A. That is correct.

Q. Now, this voucher says: "To payment on account annual dues." That was evidently a mistake, was it not? It should have been assessments? A. Well, I don't know; it would undoubtedly have been the assessment.

Q. The annual dues under the by-laws could not exceed on any one road over \$600, could they? A. I think that is right.

Q. So this must have been an assessment. Now, coming back to your statement of the gross income of the Metropolitan in any one year, say during 1900 and 1901 or 1902, was approximately twenty million dollars, if my arithmetic is correct; one-tenth of one mill would be two thousand dollars on that amount, would it not? A. I don't know.

Q. Well, just in order to verify my own mental calculation, would you be kind enough to compute for me and see if I am correct? A. I would not know how to go to work to do it.

Q. Let me see; one-tenth of one mill on a million dollars would be \$100, would it not, and on ten million — A. One hundred dollars on a million?

Q. One-tenth of a mill on a million, that would be upon one dollar, one-tenth of one mill; on \$10 it would be one mill; on \$100 it would be one cent; on a thousand dollars it would be ten cents; on \$100,000 it would be \$10; and on \$1,000,000 it would be \$100; and on \$20,000,000 would be \$2,000. Is my operation correct, by you, Mr. Vreeland? A. I am not an expert accountant, Judge.

Q. If that is correct under that assumption, then this contribution in 1900, of \$12,300, and this contribution in 1901, of \$7,000, could not have been the regular annual assessments for legislative purposes, could they, if my operation is correct? A. It could have been nothing else, because the Metropolitan Street Railway interests never contributed to the Street Railway Association, to the best of my recollection, in any shape, save its dues and this special assessment, which was paid by all the railroads of the State of New York that belong to the association.

Q. Then one of two things must be true; either there were

special assessments, or else the proportion — the basis rather, of assessment, was larger than one-tenth of one mill on gross income, if my operation is correct; is that true, Mr. Vreeland?

A. As you state it.

Q. Now, you were a member of the executive committee of the association? A. Yes, sir.

Q. Now, do you recall during your membership of that committee, whether or not special assessments for legislative purposes were made? A. Well, I cannot get this distinguishing thing between dues and assessments that you are talking about; were they anything besides dues in the association first?

Q. By-law Number 15, under the head of "Fees" provides: "All members whose annual gross receipts are one million dollars or over, shall pay \$600 per year. You recall that, do you not? A. That is right, yes, sir.

Q. Now, the by-laws do not provide for any assessment or any income other than dues, annual dues, but the records of the association, as I have shown you, continually provide for very large amounts, which are termed assessments and special assessments. Did you know Mr. Connett, the vice-president and general manager of the Syracuse Rapid Transit Railway Company? A. Yes, sir.

Q. Do you recall in 1903, in October 1903, who became president of the association, when Mr. Rogers went out? A. I recall generally that he did at some time in 1903, yes, sir.

Q. I read you a letter from the files of the association, as follows: "Syracuse, November 16th, 1903. Mr. W. W. Cole, Secretary, New York Street Railway Association, Elmira, New York. Dear Sir: I fear that you are confused in regard to the difference between what are termed 'dues' and 'assessments.' The dues are stipulated sums each year. This company" — referring to his company — "pays \$400 annual dues. Some of the larger companies pay \$600, and the smaller companies proportionately less; but it is a fixed arbitrary sum. I do not know how it is arrived at; but I think you ought to send out bills for these dues, the same as they were last year." Mr. Cole, you will recall, had just then become secretary of the company. The next paragraph of the letter reads as follows:

"The assessments for legislative purposes were based upon a percentage of the gross income, which was up to last year, one-tenth of one mill of the gross income of each road; but you know that at the executive session of the association in Syracuse, it was determined to eliminate the assessment so there will be no more assessments at least for the present." Now, does this letter of the president who succeeded Mr. Rogers, refresh your recollection at all, or clear your mind with reference to the difference between dues and assessments? A. It does not clear my mind as between dues and assessments. That was not the entire thing. It was assessments and special assessments. I only knew of one class of assessment; and now, to clear the thing up right in the first of my testimony, I said that there were regular dues and assessments for the special purposes of the association, and conducted by the president.

Q. All that I recall; but where I am confused, and which I wish to inquire from you before the Committee, is, Mr. Vreeland, that during your incumbency as president of the Metropolitan, and also at the same time as a member of the executive committee of this association, that the Metropolitan paid in one year, as I have shown you, \$12,300; in another year, \$7,000. Now, one-tenth of one mill upon its gross income, if it were twenty million dollars, would not exceed \$2,000, and I find all through the records, or at several points, at least, in the records of the association, reference to special assessments. These two facts taken together lead me to inquire of you as a former member of the executive committee, whether or not there were not levied, in addition to the annual assessments for legislative purposes, special assessments for legislative purposes? A. I never heard of any but one class of assessment.

Q. You drew the checks for the Metropolitan; do you think, Mr. Vreeland, in your careful method of doing business, that you would have drawn checks for amounts so much in excess of what the company was liable to pay under this annual assessment plan?

A. I never have had any knowledge of the Metropolitan Street Railway ever paying to the Street Railway Association of the State of New York any more than its proportion of a gross amount raised from the street railways of the State of New York that were members of that association.

Q. No, that is not my question. Perhaps the others paid their proportionate part of the special assessments. No doubt that is true. But what I am getting at is, were there any special assessments laid from time to time in addition to the regular assessments for legislative purposes? A. I never knew of but one class of assessment.

Q. Then, don't you see, Mr. Vreeland, under the evidence which I have shown you, checks drawn by yourself, the Metropolitan must have paid largely in excess of one-tenth of one mill? A. The distinction, Judge, is this: That while that letter might state that at some year, it was one-tenth of a mill, at some other year it might have been two mills and three mills, based upon gross earnings. It is not conclusive that that was the average of assessment. The assessment might have been in some year, very, very largely in excess of that.

Q. Do you recall whether or not the basis of assessment was ever in excess of two-tenths of one mill on gross earnings? A. That I could not —

Q. I will be frank with you; I will get the information from Mr. Rogers; it was first one-tenth of a mill and subsequently raised to two-tenths of one mill. I will be frank with you, Mr. Vreeland, and tell you all I know. Do you recall whether it was ever increased over two-tenths of one mill? A. I do not.

Q. If the Metropolitan paid \$12,300 then in 1900, even at the rate of two-tenths of one mill, that would be only \$4,000 at twenty million, and in order to get up to twelve thousand dollars, your gross income would have had to have been over \$60,000,000? Was your gross income in any one year \$60,000,000? A. Not of the Metropolitan, no, sir. I don't know what the gross income of all the railroads was of the State.

Q. I do not refer to all the railroads of New York; I am talking about the Metropolitan only. A. Yes, sir.

Q. Do you recall any special purpose for which this \$7,000 assessment in 1901, which I have shown you paid by the Metropolitan, was to be used? A. I do not, no, sir.

Q. I will tell you frankly why I ask you that question. It appears from the evidence here, that on April 23rd of that year, Mr. Robinson, the treasurer of the association, credited Senator

Goodsell, through the firm of Ellingwood & Cunningham, \$9,000 at that time. Did you have any knowledge of any assessment being made for any such purposes? A. No, sir.

Q. Do you know what the assessments were that were paid by the Metropolitan in 1902? A. I do not, no, sir.

Q. Well, I am not able to refresh your recollection, because the records of the association for that year do not seem to be in existence. We have made very diligent search to discover them, and subpoenaed them, but we have been unable to find them. Do you know what payment was made in 1903? A. No, sir, I do not.

Q. I show you, Mr. Vreeland, copy of a letter which appears in the records of the association, written by Mr. Cole, the treasurer, dated September 27th, 1903, to Mr. Robinson, the latter paragraph of which reads as follows: "On July 22nd, I commenced deposits with the bank with which I am doing business, and deposited remittance from the Metropolitan Street Railway Company, account of Third Avenue, \$8,000." Does that refresh your recollection in regard to the amount contributed by the Metropolitan in 1903? A. It does not.

Q. \$8,000 would be far in excess of either one mill or two mills on the gross income; if the gross income was twenty million dollars, that would be four mills. Do you recall whether or not the assessments had gone up for legislative purposes, to four mills? A. I do not, no, sir.

Q. Do you recall the assessment in 1904? A. I do not think, Judge, that I was connected with the association after 1903.

Q. No, you were not, after 1903? A. No.

Q. But you were still connected with the Metropolitan Securities Co., were you? A. With the Metropolitan Street Railway; the company was then leased to the New York City Railway Co., and the Metropolitan had ceased to be an operating company.

Q. Do you recall any contributions made by the New York City Railway Company in 1903, or 1904? A. I do not, Judge.

Q. Or 1905? A. No, sir.

Q. I am unable to refresh your recollection in regard to those two years for unfortunately those records are missing. Now, you will recall that so far, Mr. Vreeland, I have refreshed your recollection for the years 1900, \$12,300.47, 1901, \$7,000, 1903, \$8,000, which

he states there is a part payment. Now, do you recall what further payment there was in 1903? That makes for 1900, 1901 and 1903, omitting 1902, of which we have no records, \$27,300.47. Do you remember any further contribution in 1903, as the treasurer states that the \$8,000 is only in part? A. No, sir, I have no recollection of it.

Q. Now, did you know for what purpose or purposes these assessments were used, Mr. Vreeland? A. As I testified early in my testimony they were raised for a special fund for the president's use in connection with the handling of his office and legislative work.

Q. And did he from time to time make reports to the executive committee as to what use he had made of the funds? A. He did not.

Q. Did the executive committee make any inquiries of him from time to time as to what use he was making of these funds? A. I have no recollection of it.

Q. The matter was left wholly to Mr. Rogers, was it? A. That is correct.

Q. Now, do you know of an association known as the American Street Railway Association? A. Yes, sir, very well.

Q. And what was that, Mr. Vreeland? A. That was an association, and is to-day, of all of the street railroads of the United States, Canada and Mexico, and also allied with it in membership are the chief manufacturing interests of this country that have to do with railroad supplies and equipment.

Q. And how long has it been in existence? A. I can't say, sir, but ever since I have been connected with street railroading.

Q. Do you recall who its officers were say in the year 1900-1901? A. No, sir, I cannot. The method of that association was that wherever the association was held in any of the large cities the head man, or the leading man in street railroading of that city was elected president at the close of the session.

Q. Now, what sources of income did it have? A. Regular dues from members and associated membership.

Q. Did it have any other source of income? A. Not that I recall, sir.

Q. Do you recall whether in 1900-1901, Mr. Robinson was the treasurer? A. I don't think he was.

Q. Was he ever treasurer? A. Not to my knowledge.

Q. Did the Metropolitan belong to it — was it a member in 1900-1901, or 1902? A. It was; yes, sir.

Q. And did the New York City Railway Company belong to it afterwards? A. Whether it changed the name or not, the personnel of the force was the same. It belonged, and I think they do to-day.

Q. Do you know who the president of it is? A. No, I am not sure; somebody in the east I think; the east has the representation now.

Q. Do you know who is the secretary and treasurer? A. No. There was a change made at the last executive committee meeting, and I don't know now who succeeded.

Q. Of course you have records that will show — will you kindly let me know? A. I haven't any record.

Q. Has the Metropolitan Securities Company? A. No.

Q. Has the Interurban? A. Of course I could send you a record of the association that would show its officers for a period of years.

Q. That is what I was inquiring for. If you will let me have it I will appreciate it. Now, do you know whether it levied assessments in addition to dues? A. It never did on our companies.

Q. Do you know whether or not its president ever used any of the income of the association for political purposes? A. I do not.

Q. What were the dues of this association, do you recall, Mr. Vreeland, say in 1900 or 1901, or 1902, the National Association? A. No.

Q. About how much? A. I don't know. There was a standard of dues. I could just as well furnish you that in connection with the other.

Q. Were they large amounts, as much as \$500 or a thousand dollars? A. They were based upon the gross earnings of the company on a percentage basis, and I don't know how large they were. They were not very large — I know that.

Q. Well, in any one year would they be as much as \$1,000 on your company? A. No, sir.

Q. I show you a voucher of the Metropolitan Street Railway Company;

“Construction Department, Metropolitan Street Railway Company, Cable Building, 621 Broadway, New York. American Street Railway Association, H. A. Robinson, Treasurer, Register,

960. 1901, October 4, to advance on open account to H. A. Robinson, March 14, \$500. March 20th, rent, \$1,000, July 23rd, \$2,000, October 4th, \$10,000," \$13,500 in all. Signed by the auditor, also by Mr. Warren, assistant to the president, and receipted for on October 5th, 1901, by Mr. Robinson for the committee. Does that refresh your recollection in regard to the contributions made by the Metropolitan to the National Association? A. I can explain it fully if you want the explanation.

Q. Yes, that is what I wish. A. It is already in the public records, but I will explain it again.

Q. For the benefit of this Committee? A. The American Street Railway Association held its convention in the various large cities of different sections of the United States each Fall. It was an invitation proposition. The railroad companies of any large city invited the association there. The railroad companies of that section took upon themselves the obligation with that invitation of paying all the expenses of the association in the city where the convention was held. In this year the convention was held in New York City at the Madison Square Garden. The local committee in New York City, which committee comprised all of the railroads in and about New York, met, and they appointed me as chairman, and Mr. Robinson as treasurer of this special committee. The expenses which consisted, in one instance, as you gentlemen well know, the rent of Madison Square Garden is a thousand dollars a day, the entertainment—this association brought a great many thousands of people to entertain, dinners are given and things of that character. The railroads of this vicinity, including all the railroads of this vicinity agreed to pay that. It was paid by the Metropolitan Street Railway Company, and the Metropolitan Street Railway company received from every railroad company around New York a proportionate return of that money, based upon the numbers of the associated companies in it. All the roads in this vicinity contributed.

Q. (Showing papers to witness.) And these are the two checks by which that was paid, drawn by Mr. Hasbrouck, one to Mr. Robinson for \$10,000, and one to your order for \$3,500? A. That is correct.

Judge BRUCE: Now, Mr. Vreeland, I have only received a portion of your account from the books of the New Amsterdam

Bank this morning, and I am awaiting the balance of it. When I receive that there may be some other questions that I wish to ask you. If so, I will notify your counsel. If there is any way, prior to the further examination which I may make, by which you can refresh your recollection as to the brokerage houses to which payment was made by the Metropolitan for the purpose of taking up these stocks, I wish you would endeavor to refresh your recollection if you can. That is all this morning.

W. W. COLE, recalled.

By Judge BRUCE:

Q. Have you discovered the book in which you, as a personal memoranda, kept the moneys received by you as treasurer of the Street Railway Association? A. No, sir, I have been unable to do so.

Q. Where have you searched for it? A. I have searched through a number of the companies with which I was connected to see if they had any of the records, and I have searched through all my records at the Philadelphia office.

Q. When did you last see it? A. I have not seen it in quite a number of years.

Q. How many? A. Not since 1905, I don't think, or 1906.

Q. The first day I examined you you were very positive that you would be able to discover it? A. I did think so; yes, sir, but my effects all passed through a fire in my office at Elmira, and also through a flood, and I lost a great many things.

Q. You produced at the last hearing a file of letters of the association and also a letter book of the association? A. Mr. Beardsley produced the letters.

Q. Yes, and this file. Do you know where he discovered those? A. I can't say; no, sir.

Q. Do you know why they were not discovered prior to that time? A. I can't say.

Q. Can you give me any explanation as to what surviving records there are of this association which are very meagre indeed, seem to appear so intermittingly, one day we will get a part of one book,

and another day another letter file. Do you know any reason for that? A. The stenographers got some of the mail mixed up with a number of other companies at the time in the copying.

Q. But this letter book all relates to the association, and so does this letter file. Unfortunately we do not find in it any other letters other than those which we have already put in evidence. A. When I left Elmira two years ago I had the stenographers, as far as possible, sort all the mail from other companies, and return the letters and books, etc., to the companies for which they had been drawn.

Q. Have you found the rest of the letter book from which these leaves came? A. No, sir.

Q. Have you made a search for it? A. Yes, sir.

Q. Where? A. I made a search for it through all my files at the Philadelphia office, the books which were sent from Elmira, and I have requested the superintendent of the Railway Valley Company to go through their files, and I have a telegram here to-day in regard to that.

Q. Did he go through them? A. Yes, sir.

Q. Did he find anything? A. He found nothing at all.

Q. Do you think there is any probability that any other records of the association will be discovered other than these fragmentary ones? A. Not in my files; no, sir, I have nothing further.

Q. Now, you heard my examination of Mr. Vreeland? A. Only a part of it.

Q. Did you hear me read portions of a letter which you received November 16th, 1903, from Mr. Connette? A. I did.

Q. That portion of it which related to the two sources of income of the association, to wit, dues and annual assessments for legislative purposes? A. I heard that.

Q. You continued, of course, as you will recall, to collect the back assessments, the unpaid assessments, after you became secretary in 1903? A. Yes, sir, there were some that I collected.

Q. Clear down to and including some in June, 1904, don't you recall? A. I didn't think there were any as late as that. My memory is that there wasn't any as late as that.

Q. I show you a letter written to you as follows:

SYRACUSE, NEW YORK, May 11, 1904.

Mr. W. W. COLE,

Secretary and Treasurer, Elmira.

DEAR SIR:

I hand you enclosed check for \$687.39 in settlement of assessment of Street Railway Association 1903, kindly accept and return voucher and oblige,

Very truly yours,
SYRACUSE RAPID TRANSIT RAIL-
WAY COMPANY,
"J. M. JOEL, Auditor."

That letter is dated May 11, 1904. You were still then collecting back assessments, were you not? A. That was for to make up the deficit, as I understand it.

Q. My question was whether or not as late as May, 1904, you were still collecting back assessments? A. If there were any back assessments at that time; yes, sir.

Q. Now, what was the basis of these assessments that you were collecting in, these back assessments for legislative purposes, on what basis were they levied? A. I have no particular memory. I had nothing to do with that assessment or the basis on which it was made up.

Q. Did you ever have any information in regard to it? A. My memory is it was one-tenth of one mill.

Q. On gross income? A. On gross income.

Q. Well now, you are something of a mathematician, Mr. Cole. Will you kindly perform the service for me, casting up one tenth of one mill on \$20,000,000? A. That would be \$2,000.

Q. \$2,000? A. Yes, sir.

Q. Then \$12,300 raised upon that basis would be on a gross income of over sixty millions, wouldn't it? A. I believe it is.

Q. It would be even more than that, would it not? A. It would be six times that amount, which would be one hundred and twenty millions, would it not? If it is \$2,000 on twenty million, how much would it be to make \$12,000? A. Six times that.

Q. That is \$120,000,000? A. Yes, sir.

Q. Now, do you recall whether the assessment in years previous

to the time when you were secretary and treasurer were ever increased above one-tenth of one mill? A. I can't say.

Q. Did you ever learn anything in regard to that? A. No, sir.

Q. Well now, Mr. Connette in this letter says to you, "At the executive session of the association in Syracuse it was determined to eliminate assessments." Why was that done, do you recall? A. Why, I believe they didn't think it was necessary.

Q. Necessary or expedient? A. Necessary.

Q. That is they could accomplish what they had previously accomplished through assessments, in some other way? A. Why, they could conduct the association without it.

Q. Without any fund for legislative purposes? A. Without any fund further than the regular dues.

Q. Well, why was Mr. Connette in doubt about it. He says, "So there will be no more assessments at least for the present?" A. I can't say what his doubts were.

Q. Do you know of anything that had happened about that time when there was this re-organization, and the old management went out, which led them to believe that it was not expedient to further levy assessments for legislative purposes? A. There was complaint from some of the companies that their dues were too high.

Q. Their dues or their assessments? A. Both.

Q. Did they think that \$600 on a company with over a million gross income was too much, or did they think the assessments were too large? A. The assessments in conjunction with the dues were making a heavy expense.

Q. Was that the only reason why they suspended assessments? A. That is the only reason that I know of.

Q. Now, Mr. Vreeland has stated on the stand that his observation was that there was such an agitation throughout the country in opposition to contribution by corporations for political purposes, and that in some States it had already crystallized into legislative enactment, and later, in 1906, in this State. He says that that he thinks was the reason for discontinuing contributing to the fund for legislative purposes. Do you agree with him? A. I should presume that would be one of the reasons; yes, sir.

Q. Why didn't you state that before when I inquired of you? A. Because I was not present at the meeting, I was absent in Denver.

Q. It is not a question of meetings. I want to know why this policy of the association was so radically changed, and you said because they thought it was not necessary. I asked you if you meant necessary or expedient, and you said "necessary?" A. As treasurer of the company I probably heard more complaints from the financial end than I did from the other.

Q. Now, on November 10, 1903, Mr. Connette writes you as follows:— His previous letter to you in regard to these assessments was on the 16th—six days prior to that he had written you as follows: "Syracuse, New York, November 10, 1903. Mr. W. W. Cole, secretary New York Street Railway Association, Elmira, New York. Dear Mr. Cole:— Yours of the 9th enclosing check for convention appropriation received. I am pleased to learn that the Brooklyn Rapid Transit Railroad Company has paid its annual dues. Confidentially, we have been working out a plan that we hope to develop by next Saturday, and if it worked out as we contemplate, there will be no reason why we cannot go ahead with the association without fear or favor." To what did he refer to there when he speaks about going ahead without fear or favor? A. Why, I don't know as I recall just what the intent was at that time. There had been more or less complaint of the assessment and dues, and complaint in regard to the general conduct of the association, that is, as to its exact methods that it had adopted, and they had been studying out various plans for its future operation. Just what he had in mind there, I don't know.

Q. There was the rising tide of public opinion in this State in opposition to these methods which frightened the association and led to this re-organization, and the determination to adopt the plan which could be carried out without fear or favor? A. Why, I presume the change of opinion all through would have had this effect on them; yes, sir.

Q. Don't presume, did it or not? A. Why, the change of opinion by members of the association, and the change of the public, too, also would have its effect; yes, sir.

Q. Do you recall whether or not the executive committee was continually advised as to the disbursements of the funds raised by the association? A. I don't know that they were; no, sir.

Q. On October 12, 1903, Mr. Robinson, the previous treasurer

of the association, writes you as follows:— I quote but part of his letter. "In reference to the approval of the payment of the money from the treasury, I beg to say that the line of disbursements was such that the executive committee was thoroughly advised, and authorized the treasurer to pay the same on the approval of the president." Would that not indicate that the executive committee had been thoroughly advised as to the disbursements that were made by the president from this legislative fund? A. Yes, sir, it would.

Q. Now, was that plan of assessments ever removed during your incumbency? A. No, sir.

Q. As secretary or treasurer? A. No, sir, it was not.

Q. Do you recall whether there was a statement of annual assessments based upon one-tenth of one mill, as you have stated, and that in addition to that, from time to time special assessments were levied? A. Well, my memory was that there was just that assessment.

Q. That is the only assessment for legislative purposes? A. Well, I think that that varied. I am not sure.

Q. Well, what I want to know is whether there was the regular annual assessment for legislative purposes and also special assessment. Do you recall? A. Well, we termed all special assessments that were made outside of the regular dues.

Q. Then how was it that the Metropolitan in 1900 contributed \$12,300 on a gross income of twenty million, if there were no special assessments? A. I could not say.

Q. I show you a letter which you wrote Mr. Connette on January 11, 1904, in which you say: "I am in receipt of yours of the 9th, but have no receipts to report from any of the companies on account of special assessments. Not only have none of the companies remitted, but none of the companies who agreed to make up the difference have remitted as yet." Now does not that recall to your mind the fact that there were special assessments made from time to time in addition to the regular assessment? A. I think that refers entirely to making up that deficit, which was the only deficit I had during my incumbency.

Q. I am inquiring whether prior to your incumbency they were in the habit of levying special assessments for special occasions or special conditions. A. There was some such assessment.

Q. That is what I am attempting to establish? A. Yes, sir.

Q. And that would account for these large payments by the Metropolitan and other companies in various years, would it not?

A. It would.

Q. Do you know what the gross income of all the members of the association was in 1903, the year you took office? A. That is, from the dues?

Q. No, the gross income of all the members of the association. A. No, sir, I don't

Q. Those were matters of public record, were they not? A. Yes, sir.

Q. Well, do you recall in 1903 or 1904, any time during your incumbency, what the aggregate gross income of all the railroads which were members of this association were? A. No, sir, I don't.

Q. Now, in the letter which Mr. Rogers writes you, October 12, 1903, after speaking of this deficit which we are trying to take care of, he says: "I understand from him that he will take care of this or a part of it as soon as they have another meeting of the directors. You understand that certain other things have to be taken care of." What were these certain other things that had to be taken care of that Mr. Rogers said you understood? A. Why, I don't remember at this time what it was.

Q. This was in 1903, October 12, when you took office. Now just search your memory for a moment. A. I don't remember any other obligation, except the deficit, that I had to take care of, coming into my hands.

Q. Well, after you became secretary and treasurer of the association were contributions made for political purposes or legislative purposes? A. Nothing more than to get the copies of the bills, etc., affecting the association.

Q. Nothing more than that? A. And for legal advice.

Q. That is all? A. That is all that I know of.

Q. Now I show you a letter which appears in the letter book of the association, page 366, written by you to Mr. C. Loomis Allen, Utica & Mohawk Valley Railroad Co., Utica New York and marked personal. Who was Mr. Allen? A. Mr. Allen was general manager of the Mohawk Valley Company at that time.

Q. Was he an officer of this association? A. I believe he was on the executive committee.

Q. You say, "My dear Mr. Allen: I return your letter enclosed, and I am surprised at the condition which the Cassidy bill has gotten into, for I have certainly been assured by the leading men of the district that if a donation were made to the party about which I have already spoken to you, that the bill would be put through. The whole thing at the present time is whether the donation on the lines already suggested can be raised, if so I would be willing to take the matter up and push it. Otherwise, I am confident it would be thrown away and we can do nothing. I cannot go to Albany this week, as there are two important law suits coming on which require my attention." Now, what was the donation that you was urging them to make? A. Why, I don't even remember what the bill was, at this time.

Q. Do you remember what the donation was? A. No, sir, I don't.

Q. The matter which you state, if it could be made — from what political party was it, or organization, do you know? A. No, sir, I don't.

Q. Don't you recall that you state, that if the donation could be made the bill would go through? Now just wait a moment before you answer. Reflect for a moment. This is not so long ago — only seven years, up in Elmira, you was writing to this man Allen in Utica. You say, speaking about a bill pending in the Legislature — the Legislature was then in session, and you state, if a certain donation could be made to a political party, that you was willing to take up and push through — that you thought the bill could go through. Now just for a moment reflect, and give me the facts in regard to it. Do you recall a bill concerning electric light companies — not power companies but a bill concerning electric light companies, so as to give them power stations and added rights under the law of eminent domain and condemnation proceedings, etc., does that refresh your recollection in regard to bills? A. I believe there was a bill in regard to furnishing condemnation rights to the high potential pole lines going through the districts, yes, sir.

Q. Now give us the facts. This bill could go through if there was a certain donation made, donation on the lines already suggested. Let us take up first the lines. What were they that you had suggested? A. Why, I don't remember what they were.

Q. To whom was this donation to be made? A. That I cannot say.

Q. Was it to a political party or to an individual?

Chairman MERRITT: Show him the letter.

Q. I will read the letter again. Perhaps it will refresh your recollection: "I return confidential letter enclosed, and I am surprised at the condition which the Cassidy bill has gotten into." That was the Senator from your district? A. Yes sir.

Q. "For I have certainly been assured by the leading men of the district"—now that would be your district. A. It would.

Q. The leading men of your district had assured you that if a donation were made to a party—now was that to an individual or to a political organization? A. Why, it was a party, I think.

Q. "About which I have already spoken to you." Now, you had had a conversation with Mr. Allen about this. What had you said to him? A. Why, my memory is entirely on the bill itself. I don't remember anything about the donations at this time. That was a bill taking all the high potential lines going out through the country.

Q. Yes, I refreshed your recollection on that. It is very vivid now. Let us get back to the donation about which I have already spoken to you—"that bill would be put through. The whole thing at the present time is whether the donation on the lines already suggested can be raised, if so, I would be willing to take the matter up and push it, otherwise I am confident it would be thrown away and we could do nothing." Now, Mr. Cole, do you pretend, to tell me that after seven years only, in a matter of that kind, it has entirely faded from your memory, and you cannot tell me the party or any fact in reference to it? A. I do; yes, sir.

Q. This is 1905. I withdraw two years. It is only five years ago, and you don't have any recollection in regard to it at all? A. No, sir.

Q. Here you say, if this donation was made you could put that bill through, in your judgment. Now that must have been an important fact in your mind. A. I don't think the bill was so very important to us. We had one or two little lines, in conjunction with every one of the lines in the State.

Q. Wasn't it important enough for you to come here to New

York and to write nearly every leading daily in New York in regard to the bill? Wasn't it important enough for you to write the members of the Legislature, that it was not the Niagara power bill? Wasn't it important enough for you to go to the Press Associations and have them send out your statement to papers throughout the State, that this was not the Niagara power bill, but it was a good bill, do you recall that? A. I recall the bill, yes, sir.

Q. Do you recall your activity in regard to it? A. I recall writing letters, or anything—I was trying to put it through successfully, if I was connected with it.

Q. Do you recall coming to New York and writing these letters to different dailies, to the Press Associations of the country, 150 newspapers in New York State, to come out in favor of the bill, and distinguishing it from the Niagara power bill? A. I believe I did write some letters in regard to it.

Q. Does that in any way revive your memory in relation to the donation? A. I cannot tell what the donation was; no, sir.

Q. I don't want to know what it was. Can you give me any fact in regard to it? Do you recall anything in regard to it? A. No, sir; I don't.

Q. What was the confidential letter that Mr. Allen sent you that you was returning to him? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Well, see if I cannot further refresh your memory. On April 28, 1905, that is three days later, you again wrote Mr. Allen: "Dear Mr. Allen. Your favor of the 25th received. I am obliged to you for your kind courtesy." Do you remember that letter, what that was? A. I don't; no, sir. It does not appear in the files that we have. "In talking with Mr. Tompkins last evening, the president of our—a committeeman of the Republican party, otherwise prominently identified with politics in this county"—that is Chemung? A. That is Chemung.

Q. "Advised me that the action taken in regard to the Cassidy bill is a most wise one, and that he would like very much to have a talk with you when you are here in regard to the future conduct of matters of a similar nature." Does that refresh your recollection? A. No, sir; it does not.

Q. Does it refresh it in regard to any fact in connection with the donation? A. No, sir.

Q. Were you acquainted with the leading political leaders of politics in your county? A. I was.

Q. Who were they at that time? A. Why, there were ——

Q. In 1905? A. J. Sloat Fassett.

Q. But you say "I have been assured by the leading men of the district"—now give me the names of the leading men of the district. A. Well, in the counties, there was Senator Cassidy, and there was Mr. J. Sloat Fassett, and I don't remember who the other men were at that time.

Q. Were there any leading Democrats up there at that time? A. Why, they were quite active at that time.

Q. Well, who were they? A. Well, I have met Mr. Stanchfield, who was our attorney, very frequently.

Q. You did not have any talk, did you, or did you, with Mr. Stanchfield about it? A. No, sir; I did not.

Q. Did you have any talk with Mr. Fassett about it? A. Not to my memory.

Q. Who did you have talk with about it? A. I don't remember. The thing as I say, I didn't think enough of it afterwards to carry it in my memory.

Q. Now, Mr. Cole, I don't want to have to go through this letter book, but if necessary I will show you that your activities in regard to this bill were wonderful. That you even wrote to the effect that you had such influence with the Press Association that you were able to bring 150 newspapers in the State of New York to the support of the bill. Now, it was not such an important bill. A. Why, it was a just bill—there is no question about that.

Q. That is not what I am discussing, but what about the donation? A. I don't think that there was absolutely any donation in connection with it.

Q. Well, you are writing here about it. Take this letter and read it yourself now, carefully. (Handing witness letter.) Now can you give me any further fact in regard to it, or any fact? A. Not at the present time; no, sir.

Q. Will you endeavor to refresh your recollection? A. I will.

Q. What was the Empire State Gas & Electric Light Association? A. That was an association of a number of gas and electric companies of New York State.

Q. When was it formed? A. I think about 1904 or 1905.

Q. Where? A. They held their meetings here at New York City at first.

Q. For what purpose was it formed? A. Why, for taking up the various operating conditions, and getting a certain standardization of accounts, which did not exist among certain of the companies.

Q. Who was the officers of it? A. I was the first president.

Q. Who was the secretary and treasurer? A. I believe Mr. Beal was.

Q. Is it still in existence? A. Yes, sir.

Q. Who is president of it? A. I could not say.

Q. Who is secretary and treasurer? A. I don't know.

Q. How long is it since you were connected with it? A. Two or three years.

Q. Where were its offices at that time? A. Why, we did not have a regular office.

Q. What did you have? A. Why, we used while I was president my office, for the conduct of work, probably as much as any other, then the secretary conducted his work from Newburgh.

Q. Did it keep records of its transactions? A. Yes, sir.

Q. What book did it keep when you were connected with it? A. Why, there was not very much—the association was not particularly active for about a year, and they just kept the regular records, which were printed.

Q. Did it keep any other records that were not printed? A. No, sir.

Q. Well, the Street Railway Association did. Now did this company? A. No, sir; it did not.

Q. What were its sources of income? A. Annual dues.

Q. How much were they? A. Why, they amounted to—let's see, the first year I think about 1,800 or 2,000, and the next year they went something over that—2,800.

Q. What was the basis on which they were levied? A. I don't remember. It was a basis upon the gross earnings of the companies.

Q. Did they have assessments as well as dues? A. No, sir, they did not.

Q. Have they ever had assessments as well as dues? A. I think not.

Q. Did they take any interest in political affairs? A. They did not.

Q. Did they take any interest in legislative matters? A. Nothing more than to watch the course of bills affecting electric light and gas companies, and so forth; change of laws.

Q. Did they raise any funds for these purposes? A. No, sir, they did not.

Q. Where do you think I could find their books and records? A. Their records have been printed from year to year, and I should presume the present treasurer would have them, the secretary and treasurer.

Q. Did they keep more than one set of books? A. No, sir, they did not.

Q. Did the Street Railway Association keep more than one set of books? A. Not to my knowledge.

Q. I show you a letter written to you by Mr. Connett, president of the Street Railway Association, dated March 5th, 1904: "It seems to me that all of the records and belongings of the association ought to be kept in custody of the secretary and treasurer. I return herewith the bill, which I presume we will have to pay, but I do not see why the association should have two sets of these books." Did the association keep two sets of books? A. Not to my knowledge; no, sir.

Q. What did Mr. Connett refer to there? A. I do not understand, unless ———

Q. He says: "I have yours of the 4th instant, also a letter from Mr. Robinson, dated the 3rd, which I return herewith. I do not see why the association should have two sets of these books. All the books ought to be kept in the custody of the secretary and treasurer." What other books were there? A. None, to my knowledge.

Q. Were you active in looking after legislation for the Street Railway Association in 1905? A. No, sir.

Q. I show you a letter written by you to Mr. Allen; what was his connection with the association then? A. I believe he was on the executive committee.

Q. You say among other things: "There are a number of bills which are coming up this week, which are of considerable importance to railroad interests, for instance, Senator Lewis' bill,

No. 388, Introductory No. 348, extending the liabilities of employers for accidents to employees. There is Senator Gardiner's bill, allowing any citizen to commence an action to compel a corporation to comply with the terms of its franchise. There is Gardiner's bill, No. 151, introductory No. 138, to amend section 3253 of the Code of Civil Procedure, relative to additional allowances. There is, also, a hearing before the Assembly codes committee, on Brooks' bill, relative to injunction and labor disputes. This bill is particularly onerous. There will also be a hearing on Senator Grady's bill to compel street railroads to furnish adequate capacity for all passengers at all times and under all circumstances, under a \$50 penalty. This is all for this week, but there will be a few more in a bunch for next." Do you recall that letter? A. I do not recall it, but, as secretary of the association, I naturally looked after anything that would affect the railroads.

Q. Then the only concern which this association had with legislative matters was not simply to secure uniform legislation; it was for the purpose of defeating legislation that you felt was adverse to the members of the association, and promoting legislation which you felt was in their interests; is that correct? A. To a certain extent, yes.

Q. Wasn't it to a very large extent; was not all these contributions made, these credits given, through the brokerage firms to members of the Legislature and members of the Committee on Railroads in both houses, and your activity as secretary and treasurer, not for the purpose of securing uniform legislation, but for the purpose of defeating adverse legislation, and for promoting legislation that you thought was beneficial? A. For the purpose of securing just legislation.

Q. What you term just legislation? A. Yes, sir.

Q. This Cassidy bill that you have referred to, do you know who drew the bill? A. No, sir, I do not remember.

Q. Do you know what interests were behind it? A. I do not remember at this time.

Q. Do you know who were advocating it, outside of your association? A. No, sir, I do not.

Q. Was the association itself advocating it? A. I think not; I think it was more of a personal matter.

Q. You were acting secretary of your company; you were connected with that? A. Yes, sir.

Q. What other companies were behind it, do you know? A. No, sir.

Q. Do you remember what individuals were behind it? A. No, sir, I do not.

Q. Who attended the hearings and advocated the bill? A. I don't remember.

Q. Your recollection in regard to that bill seems to be intensely vague? A. I do not remember anything particular about it just now.

Q. Did the bill pass? A. I think not.

Q. In the letter of February 13th, 1905, you state to Mr. Allen: "If you will take notice, last week 150 papers of New York State all came out in favor of the bill. I worked this through New York." How did you work it? A. I do not remember what course. I read some statements in regard to this bill and its practicability and so forth, which I think was recognized at the time.

Q. Do you remember whether you worked it through any press association or not? A. Why, I had some friends in the Press Association, that I undoubtedly wrote to. I wrote to all the papers, in fact, in regard to the actual intent of the bill.

Q. Recalling, then, your activity in regard to the bill, was the donation made? A. I do not remember anything about that donation part of it.

Q. Did you take it up and put it through, as you said you would? A. I haven't the slightest memory that there was any donation attached to it.

Q. Where is Mr. Allen now? A. I believe he is at Syracuse.

Q. When did you leave the employ of the railroad company with which you were connected in Elmira during your incumbency as an officer of the Street Railway Association? A. Two years ago this last July.

Q. What were your duties in connection with that company? A. Vice-president and general manager.

Q. You are not a lawyer, are you? A. No, sir.

Q. Never have been admitted? A. No, sir.

Q. You were not connected with the legal department of the railroad? A. No, sir.

Q. Do you know a man, or did you ever know a man, by the name of Charles Lakeman or Lankeman? A. I do not remember such a name.

Q. Did you ever know a man of such a name meeting with an accident on the Third Avenue Railroad? A. No, sir, I do not recall anything of the kind.

Q. Did you ever act as attorney for Charles Lankeman in any action against the Third Avenue road, in which he met with an accident? A. I have never been an attorney; I have always been an engineer.

Q. Then you never acted as attorney for Charles Lankeman to recover for any injuries which he received from the Third Avenue road? A. No, sir.

Q. Did you ever recover any money from the Third Avenue Railroad for Charles Lankeman? A. No, sir.

Q. Did you ever have any communication with any man by the name of Charles Lankeman? A. Not to my knowledge.

Q. Did you ever send him any receipt for any moneys you ever received for him? A. I do not know any such man.

Q. Never heard of him? A. Not that I can remember; no, sir.

Q. Did you ever have any communication with the Third Avenue road, or any of its officers, with reference to an accident which Charles Lankeman had received on the Third Avenue road? A. No, sir.

Q. Did you ever send them a receipt for any money which you had received from them in payment of injuries received by Charles Lankeman on the Third Avenue road? A. I do not remember having any connection whatever with the Third Avenue road with regard to accidents, or anything else.

Q. Do you recall the receipt of \$8,000 from the Metropolitan in July, 1903? Do you not? A. What was that?

Q. The one which you wrote Mr. Robinson on September 27th, 1903, as having received. Just look at page 199 of these fragmentary leaves from this letter book. Do you notice there, "On July 22nd, I commenced deposits with the bank with which I am doing business, and deposited remittances from the Metropolitan Street Railway Company, on account of Third Avenue Railroad Company, \$8,000?" A. Yes, sir.

Q. You recall that, do you? A. Yes, sir.

Q. Do you remember how you received that \$8,000? A. Why, I think it was forwarded to me from Mr. Robinson, by the other checks.

Q. By a draft or by check? A. My memory was that he forwarded checks on that.

Q. Do you remember what bank it was drawn on? A. No, sir, I do not.

Q. Is that in your handwriting: "W. W. Cole, Street Railway Association, State of New York, W. W. Cole, Treasurer?" A. Yes, sir, that is my endorsement.

Q. Is that the check you received, this \$8,000? A. I believe it is.

Q. It reads as follows, does it not, "Number 1707-A, \$8,000," stamped in, "New York, July 11th, 1903. Columbia Bank. Pay to the order of Charles Lankeman or W. W. Cole, attorney, eight thousand (\$8,000) dollars, Interurban Street Railway, Lessees. Metropolitan Street Railway Company, Lessees. Third Avenue Railroad Company, Charles E. Warren, Treasurer. Frank S. Cannon, Vice-President." On the back endorsed as follows: "W. W. Cole, Attorney, Street Railway Association of the State of New York, W. W. Cole, Treasurer." Then stamped: "Pay to the order of any bank or trust company prior endorsement guaranteed. Chemung Canal Trust Company, Elmira, N. Y. E. J. Dunn, Treasurer;" and then stamped in green: "Pay to the order of the Bank of Manhattan Co., Knickerbocker Trust Co., R. Gore King, Cashier," and also stamped: "Manhattan Co., Third Teller, July 23, 1903, received payment through New York Clearing House." You will note that this check is made out to Charles Lankeman or W. W. Cole, attorney? A. Well, all those checks must have been for the Street Railway Association; I had none others.

Q. Why was this made out "to Charles Lankeman or W. W. Cole, Attorney?" A. I don't know; I think it must have been a mistake, probably.

Q. Why did you endorse it: "W. W. Cole, Attorney?" A. Why, I naturally endorsed the same as it was made out, like any check.

Q. You were not an attorney at that time? A. No, sir, never have been.

Q. For Mr. Lankeman, and never have been? A. No, sir.

Q. Didn't that arouse any suspicion on your part, that that should be made "Charles Lankeman or W. W. Cole, his attorney;" didn't you feel yourself that it was not for you? A. No, it was probably sent in with Mr. Robinson's letter of some kind, or some way; I do not remember conditions, now.

Q. Why was it made out "Charles Lankeman or W. W. Cole, Attorney?" A. I do not know.

Q. Did you know then? A. No.

Q. Did you inquire? A. I do not remember the condition at all.

Q. Is that your signature? A. Yes, that is my signature.

Q. "W. W. Cole, Attorney," is it not? A. Yes, sir.

Q. I show you this voucher: "Metropolitan Street Railway Co., Lessee. Account of Third Avenue Railroad Co., Lessor, and its subsidiary line; Cable Building, 621 Broadway, to Charles Lankeman, or W. W. Cole, Attorney, registered, Number 1350-B, 6715; 1903, July 10th. In full settlement for personal injuries received May 1st, 1902, at 99th street and Third avenue, on Car No. 247; run number 70. Trip 1, north-bound. Above was passenger on car standing on rear platform. Car had come to a stop at 99th street and started up with a sudden jerk; threw man over rear — to street. He received injuries to his back and spine; shock and general contusion. In settlement of claim, Third Avenue Electric Co. \$8,000. Credit check 1707-A. Please accept receipt below, and return to Treasurer's Room 805, 620 Broadway, New York city. Examined and registered, signed by the Auditor, and also approved for payment by the Assistant to the President, and the receipt below, July 22d, 1903: 'Received of Metropolitan Street Railway Co., Lessees, and the Third Avenue Railroad Co., Lessors, and its subsidiary lines, \$8,000, for payment in full of the above account. \$8,000. W. W. Cole, Attorney.'" What is your explanation of that? A. Why, I do not remember the case. It frequently —

Q. Is this another case of the donation? A. That is the only thing I remember any money coming from.

Q. You were not attorney for Mr. Lankeman, were you? A. No, sir.

Q. Why did you sign your name as "W. W. Cole, Attorney," receipting for \$8,000 from the Third Avenue Railroad Company for

injuries received on a certain car at a certain place, on a certain date? That was made to follow up the \$8,000 contribution, wasn't it? A. Not to my memory; no, sir.

Q. Why do you sign as attorney? A. It is possible for me ——

Q. I am not going to have any "possible" about this. The donation may have been voted from your lines, but I have given you the absolute documentary proof of this transaction, and I want an explanation. Mr. Chairman, I am going to insist upon its being given. The witness has not any right to come before this Committee and have the documentary proof put before him, and then hide behind "I don't know." Now, Mr. Cole, your explanation? A. It is possible ——

Q. I do not want what is "possible." I want the fact. A. In a great many instances ——

Q. I do not want "a great many instances." I want this instance. A. I shall have to have time to refresh my memory.

Q. Take time, we will wait. I think I have thoroughly refreshed your recollection. I have shown you the check, and I have shown you the voucher, and the receipts, and all the facts with relation to the injury. A. I absolutely do not remember the case at all.

Q. I presume you do not, but I have refreshed your recollection in regard to it. Read it. There is the whole case; check, draft, explanation of the accident, when it occurred, and all about it? A. Yes, sir. Well, there were some cases ——

Q. I don't want some cases; I want this case. A. I cannot give it at this time.

Q. You return at two o'clock, please? A. Yes, sir.

Judge BRUCE: It is now one o'clock, Mr. Chairman. I presume the Committee will adjourn for recess.

Chairman MERRITT: The Committee will be in recess for one hour.

Q. You will please refresh your recollection by two o'clock? A. Yes, sir.

Recess until 2 P. M.

AFTER RECESS.

2 P. M.

W. W. COLE, recalled.

Examination by Judge BRUCE, continued.

Q. During recess, Mr. Cole, has your memory been refreshed in regard to the transaction concerning which I was examining you at the time of adjournment? A. The only excuse I can give is that a great many vouchers are put upon my desk——

Q. Just a moment, Mr. Cole. I was not asking for excuses. A. No, sir, I can't remember.

Q. I want the facts? A. I can't remember that transaction any more than I took the check and sent it to New York.

Q. Has your memory been refreshed in regard to the donation? A. No, sir.

Q. Will you kindly attend at the session to-morrow morning at 10:30, and in the meantime will you endeavor in every possible way you can to refresh your recollection in regard to these two transactions? A. I will.

G. TRACY ROGERS, recalled.

Examination by Judge BRUCE:

Q. You will recall, Mr. Rogers, that in the evidence which you gave on September 7th, which was the first public session of the Committee, you stated that the Street Railway Association had as its counsel Senator O'Connor, and afterwards Senator Nussbaum. Now, can you give me the name of any other counsel which it had? A. One between those two, I don't remember his name.

Q. Mr. Bissell of Rochester, Mr. Stanchfield suggests? A. Yes, but another one.

Q. Was Mr. Bissell after Senator Nussbaum or before that? A. Before Senator O'Connor.

Q. You think there was one between Senator O'Connor and Senator Nussbaum? A. Yes, sir.

Q. Do you recall his name? A. Well, I was in Albany very little that year and I don't remember.

Q. Do you recall who succeeded Senator Nussbaum? A. I think not. Senator Nussbaum was there when I——

Q. Well, you first became president in 1893, did you not? A. Was it, or in 1894. I don't remember.

Q. 1893-94. The elections were in the fall of the year? A. I think in the summer time.

Q. 1894-95? A. 1894 — I think it was in the summer time.

Q. Do you remember who was the counsel through the association that year? A. I think Senator O'Connor was elected that year; no, now I am not sure, because he was counsel — when he left the Senate then he became our counsel — I——

Q. Do you recall how long he served? A. No, until his death.

Q. Do you recall the year of his death? A. No, sir. I think it was three or four years he served; I can't recall.

Q. Now, how long was Senator Nussbaum counsel? A. Well, after Senator O'Connor, then there was a man — I was away from Albany most of that year.

Q. Do you remember what year that was? A. No. Then Senator Nussbaum was the attorney until the end of my term. I don't know whether he served after that or not.

Q. Do you remember how many years he served? A. No, sir, I do not.

Q. Were these counsel regularly elected? A. The executive committee.

Q. By the executive committee? A. By the executive committee, usually.

Q. Were they retained upon a general retainer for the year? A. Yes, sir.

Q. Now, what were the duties of the counsel to the association? A. The duties of the counsel were to appear before the committees and to defend the bills we desire or oppose the bills that we were in opposition to.

Q. And is this what they did? A. It is. We had other counsel, Governor, before hearings at special committees and before the Governor, etc., a number of times.

Q. You retained special counsel on special occasions? A. Yes, sir.

Q. Both before the committees and before the Executive? A. Yes, sir — before the Executive, I think.

Q. Can you give me the names of the special counsel? A. There were a number of them, but I can't remember. I think there were a number of them we had at different times.

Q. The service of Senator O'Connor as counsel was after he left the Legislature? A. Yes, sir.

Q. Were any of these counsel members of the Legislature at the time they were serving as counsel to the association? A. No, sir.

Q. Was that also true of Senator Nussbaum? A. Yes, sir.

Q. Now, when you were last examined your attention was called to an account called "Rogers & J." that you had with Ellingwood & Cunningham. You could not tell me who "J." was. Can you now? A. J. was a man by the name of Jones, down on the Street.

Q. Was he connected with the Legislature at all? A. No, sir.

Q. Or with politics? A. Nothing, Governor.

Q. You had an account also "Rogers & E." which you could not tell me about. Can you tell me now who "E." was? A. No more than I think Mr. Ellingwood might have bought some stock. That had nothing to do with the Legislature.

Q. You think it might have been Mr. Ellingwood? A. He might have bought a few shares — was it a large account?

Q. Now, you also had an account, Rogers & Brady. Can you tell me who Brady was? A. That had nothing to do with the Legislature. A man on the street, it was.

Q. Not connected with politics at all? A. Not at all.

Q. Do you remember his first name? A. I think it may have been Dan Brady. We might have bought a hundred shares of stock or something of that kind. I told you it had nothing to do with the Legislature.

Q. I show you a sale of 50 Third Avenue, Rogers & Brady, March 7th, 1900. Does that refresh your recollection? A. I think it was Mr. Daniel Brady.

Q. He was not connected with the Legislature or with political affairs? A. No, sir, a merchant on the street.

Q. Now, you had an account entitled "Rogers & D.;" can you tell me who "D." was? A. Rogers & D.? You will have to refresh my memory, Governor.

Q. I call your attention to page 58 of Ledger No. 4 of Ellingwood & Cunningham. See if that refreshes your recollection? A. It was Rogers & Dunn.

Q. What Dunn was that? A. Colonel Dunn.

Q. Of Binghamton? A. Yes, sir.

Q. That was during the year 1899, was it not? A. The books will tell.

Q. Yes, it was 1899. Now, you will recall my examining you at the last hearing, at which you testified in regard to Transportation, and you said the first knowledge you had of Transportation was when you bought the 100 shares for James T. Rogers — do you recall that? A. You corrected me on that; I was wrong.

Q. You had heard of it before, had you? A. Yes, I had.

Q. Now, can you tell me definitely when you first heard of Transportation? A. As near as I can tell now it was when I bought something for Mr. Nixon, or Mr. Nixon and myself. That is the first time I ever heard of it, I think.

Q. You knew Senator Goodsell well in 1900, did you not? A. Oh, yes.

Q. Do you recall his introduction of a bill on March 13th, 1900, or March 6th, rather, 1900, extending the franchise of the New York Transportation Company? A. I do not.

Q. Do you recall the passage of the bill through the Senate, reaching its passage on the 29th, going over to the Assembly, passing the Assembly by April 5th, which was the day before adjournment, and going from there to the Executive — do you recall that? A. How do you mean do I recall it?

Q. Do you recall having known about it at the time? A. I think after I bought the stock I must have known of it; not before.

Q. Not before you bought the stock? A. No, sir.

Q. Why do you think you knew about it after you bought the stock, but did not know about it before you bought the stock? A. I was interested after I bought the stock and not before.

Q. Do you think that what led you to be interested in the stock was the passage of the bill, or its probable passage? A. No, the interest in it was a tip I had to buy it, and after I bought it I was interested.

Q. Did the tip proceed from the fact that the bill was pending and liable to be passed and become a law? A. I can't tell you. It came from Albany.

Q. The tip came from Albany? A. Yes, sir.

Q. Do you remember the person from whom it came? A. I think it came from Mr. Nixon.

Q. You think it came from Mr. Nixon? A. Yes, I think so.

Q. On March 28th, the day before the bill passed the Senate, Mr. Nixon bought 400 shares of Transportation. Did he tell you anything about that purchase? A. I can't remember definitely anything about that.

Q. Do you recall anything in regard to that transaction? Now, that was the day before the bill passed the Senate? A. No, sir.

Q. On April 9th Mr. Nixon purchased 400 more shares of Transportation. That was three days after the Legislature adjourned. Do you recall that transaction? A. I suppose I might if you would refresh my memory about it.

Q. I mean do you recall it without my refreshing your memory? A. No, sir; I do not.

Q. On the 25th, the day the bill was signed, he purchased 200 more, making his holdings 1,000 shares. Do you recall that transaction at all? A. Governor, I want to help you all I can. I think Mr. Nixon and I were in together on that.

Q. Now, wasn't it true, as a matter of fact, that you purchased this stock for Mr. Nixon? A. I might have done it. We were interested, I think, together.

Q. Would that fact refresh your recollection that you knew about Transportation before this bill had passed the Senate? A. Governor Bruce, I told you the last time, and I tell you again now, that I knew nothing whatsoever about New York Transportation before that time. Now, that is the fact that I am stating to you.

Q. But it was about that time—it is about your knowledge at that time that I wish to inquire. The bill was introduced on the 13th by Senator Goodsell? A. The 13th, was it?

Q. On the 16th of March. A telegram, which I showed you at the last hearing, signed with your initials, passed to Mr. Nixon to hold the bill as late as possible the following week. A. Did it say that—I beg your pardon—I have it indelibly in my mind. Let me see the telegram.

Q. I think I can quote it: "It is imperative that nothing be done until as late as possible next week." A. What about?

Q. And the bill passed on Thursday of the next week. Now, did

that telegram relate to Transportation? A. Not in any way, shape or manner, as far as I can remember. It is signed "T." That is so. It might have been my telegram. I will not dispute that. But will you tell me how I should send that telegram in advance of the time it was in the Assembly?

Q. It said "It is imperative that nothing be done until as late as possible next week." Now, on Thursday, the 29th, the bill was passed, and on the 28th, which was Wednesday, you purchased 400 Transportation for Mr. Nixon. Does that refresh your recollection? A. Not a bit. Now let me say, Governor —

Q. No, you answer my question. We won't make any progress if you and I enter into general discussions. On the 6th Senator Goodsell bought 100 Transportation through Ellingwood & Cunningham. Had you knowledge of that transaction? It was purchased without any margin? A. I don't remember it now.

Q. And on April 9th Bedell purchased 200, on the 25th 100, on the 8th of May 200, making his holdings 500 shares. The first 200 were paid for from the proceeds of a check of H. H. Vreeland. Do you recall that transaction? A. I bought it for him.

Q. You bought it for him? A. Yes, sir.

Q. Where did you receive the money from with which you bought it? A. As it says, H. H. Vreeland's check.

Q. Was that check drawn to your order or to the order of Ellingwood & Cunningham? A. To my order.

Q. If drawn to your order why does it not appear in your account with Ellingwood & Cunningham? A. Not necessarily.

Q. How is it that when your recollection is so vague in regard to these transactions in Transportation that you remember definitely that that check was drawn to your order? A. Because I went there and got it.

Q. Where? A. To his office.

Q. What did you go there and get? A. \$3,000.

Q. Did you tell him what you wanted it for? A. I don't think so.

Q. Don't think — did you? A. I don't think I did.

Q. Did you know what you were going to do with it then? A. Yes.

Q. You were going to buy 200 shares of Transportation for

Bedell, place \$300 to the credit of Goodsell, and \$325 to your credit. Now, Mr. Vreeland was then one of the executive committee of the Street Railway Association, was he not? A. He was.

Q. And Bedell was then Chairman of the Railroad Committee of the Assembly? A. He was.

Q. And Goodsell was a member of the Railroad Committee in the Senate? A. He was.

Q. Did you say anything to Vreeland then as to what you were going to do with the check? A. I think not.

Q. Don't think. I don't want you to think, Mr. Rogers. That will not be of any service to the Committee. What is your recollection, if you have any? A. It is my best recollection that I did not.

Q. Do you have any recollection in regard to the transaction other than going there and getting it? A. No, I know that I went there and got it.

Q. It would appear from the books of Ellingwood & Cunningham, irresistibly, that the check was drawn to their order, unless they varied their method of bookkeeping in regard to that check, and made it different than with regard to any other check. A. Do you want me to answer that?

Q. Yes. A. I should say no.

Q. But it does not appear in your account? A. No.

Q. It does not appear that it was endorsed by you to their order? A. Not necessarily.

Q. It appears as a straight check of H. H. Vreeland for \$3,000, credited to Bedell, \$2,375, to Goodsell \$300, to Rogers \$325. Now, can you explain that on any other theory than that it was drawn to the order of Ellingwood & Cunningham? A. I told you it was not drawn to the order of Ellingwood & Cunningham—it was given to me.

Q. You have told me that you have no personal recollection in regard to it at all? A. I told you that I recollect I went there and got it.

Q. But in regard to whose order the check was made to. You testified you had no personal recollection as to that. Is that correct? A. My recollection is —

Q. Have you any recollection about that particular fact? A. I

should — it is a good many years ago, but I should say it was drawn to my order..

Q. Not what you should say, or what you presume, or your best recollection. In the first place, have you any recollection as to whose order that check was drawn? A. Yes.

Q. You have a recollection? A. Yes, without any question it was drawn to my order.

Q. And by you endorsed to Ellingwood & Cunningham? A. Yes, sir.

Q. Well, that is one fact which does not appear in their book, and this check does not appear in your account. Now, on April 19th, 1900, you bought 100 Transportation for J. T. Rogers, did you not? A. Whatever the records are.

Q. And you deposited, credited to his account, the sum of \$500 as margin, did you not? A. I did.

Q. Now, on February 8th, 1901, Senator Raines bought 300 Transportation, on April 4th 100, on April 22d, 1901, 200 shares of Transportation, on May 10th, 200 Transportation, making his holdings 800 shares. Did you ever have any knowledge of these transactions? A. Not that I remember.

Q. Did you ever talk to Senator Raines about New York Transportation? A. Not that I remember.

Q. Did you give him any tip or any information in regard to New York Transportation? A. Not that I remember.

Q. Did you tell him about the stock that you had bought for Nixon and also for Bedell and for Rogers? A. I think I knew nothing about that transaction.

Q. On May 8th, 1901, Mr. Baxter, the clerk of the Senate, bought 200 Transportation — did you have any knowledge of that transaction? A. No, sir.

Q. And on June 4th, 1901, Senator Allds bought 100 Transportation. Did you have any knowledge of that transaction? A. No, sir.

Q. Now, that is an aggregate, all told, of 2,800 shares of Transportation. Now, with these figures in front of you, all these facts to which I have alluded, does that refresh your recollection as to when you first heard of New York Transportation? A. I told you that before.

Q. Well, when did you first hear of it? A. When Speaker Nixon telephoned me.

Q. What did he say? A. He said he had a tip to buy New York Transportation.

Q. Whom did he say the tip was from? A. That I don't remember—it was over the telephone.

Q. Did he tell you the source of it? A. No, sir.

Q. Did he say the source was the bill about to be introduced by Senator Goodsell? A. No, he said he had a tip to buy some stock, and I asked him what it was.

Q. What did he say? A. He said New York Transportation, something of that kind; I wrote the name down.

Q. Did he tell you that already a bill had been introduced in the Senate, and was about to pass, which extended the franchise of the corporation? A. I don't think he did; he may have later.

Q. Did you discuss the bill which Senator Goodsell had introduced with Mr. Bedell or with Senator Goodsell, or with Mr. Nixon? A. When.

Q. When it was pending? A. That I am not clear on.

Q. Do you think you did? A. I think not until after I bought the stock, I should say.

Q. Did you talk with them about the bill, what it would do and what the effect would be on the stock? A. No, I don't think so, but I may have discussed the bill.

Q. What did you discuss, if it was not what the effect of the bill was on the stock? A. They might have told me what it was.

Q. They might have told you what they thought the effect was? A. I don't know.

Q. Well, going back to your answer a few minutes ago in regard to the purchase of this stock by Senator Raines, I call your attention to a letter, dated February 18th, 1901:

“HON. JOHN RAINES,

Albany, New York.

DEAR SIR:

“Enclosed we beg to hand you memorandum of cost of 300 N. Y. E. V. T.”—which is New York Electrical Vehicle Transportation, which afterward became New York Transportation—“which we

bought for your account, as per instructions received from our Mr. Rogers. We sent you memorandum of cost of this before, but not having heard from you, we presume that the letter has gone astray. Will you kindly forward us check for \$1,527.80.

“Very truly yours,

“ELLINGWOOD & CUNNINGHAM.

“Dictated J. W. C.”

Does that refresh your recollection as to whether or not you did purchase the stock for Senator Raines? A. It refreshes my memory, just what it was, as Mr. Cunningham wrote the facts, very likely.

Q. Now give me the facts in regard to these instructions which you gave Ellingwood & Cunningham to purchase this stock for Senator Raines? A. Why, I talked it over with Senator Raines in Albany, some time, and he told me to buy it for him, and I bought. That's all.

Q. Then you wish to correct your testimony in regard to not having any knowledge of Senator Raines' purchase? A. I do.

Q. Now, does that refresh your recollection in regard to the purchases by either of the other gentlemen I mentioned? A. No, it does not.

Q. You are a pretty careful investor, are you not, Mr. Rogers, and don't you think that before you made these investments for your own account and the joint account of Nixon, and purchased this stock for Senator Raines and talked the matter over with others, that you carefully investigated the effect of the pending bill upon New York Transportation? A. Well, I think I must have listened to some arguments by some people and been persuaded, or I would not have done it.

Q. Now, do you recall, Mr. Rogers, whether you personally bought New York Transportation? A. Yes, I think I did.

Q. Do you remember in what amounts? A. No. You have my account there.

Q. I show you your account, 1900, April 9, purchase of 600 shares of Transportation; do you recall that, from 11 3-4 up to 13 1-4. Also, on the 23d of April, which was before the bill had become a law, a purchase by you of 200 Transportation? Do you note that? A. It must be, if it is there.

Q. Making your holding 800 shares, your personal holding 800 shares, and these purchases were made before the bill became a law. Now, does that refresh your recollection as to any discussion you had with Mr. Nixon, Mr. Bedell and Mr. Goodsell in regard to the effect of this bill on New York Transportation? A. Why, some of them must have told me that it would have been advantageous to the company. I must have had some reason for buying that stock.

Q. In this joint account of you and Nixon in Transportation, were you both to share in the profits, if there were any? A. Equally.

Q. You were very familiar with Mr. Nixon at that time, were you not? A. I knew him well, yes.

Q. And on very friendly terms? A. Very.

Q. Addressed each other by your first names? A. Always.

Q. Now, did you purchase any other stocks with Mr. Nixon other than New York Transportation? A. I don't know.

Q. Did you and he have a joint account with Ellingwood & Cunningham? A. That I would not know.

Q. Did you introduce Mr. Nixon to Ellingwood & Cunningham? A. That I am not sure of.

Q. I show you one of the pages from the loose leaf ledger of Ellingwood & Cunningham. Do you note the account, Nixon and R.? Was that Nixon and Rogers? A. 100 shares Third Avenue.

Q. Was that account Nixon and Rogers? A. Just one entry there.

Q. Was that account Nixon and Rogers? A. It must have been. I don't know any other "N." I can't say that was mine.

Q. Can you recall whether you had those transactions with Mr. Nixon? A. I do not. It may have been me. It is 100 shares of stock.

Q. You were then a special partner in the firm of Ellingwood & Cunningham, were you not? A. I was.

Q. Were you and Nixon to equally share in the profits of this purchase? A. If that was mine.

Q. There is a purchase February 28, 1900, 100 shares of Third Avenue at 64, was it not? A. If that is what it states there.

Q. Rather, a sale of Third Avenue short at 81 on February 26, was it not? A. Yes.

Q. And you bought it in on the 28th at 64, did you not? A. That is what it states there.

Q. Making a net profit of \$1,673 on the turn; is not that true? A. A good turn.

Q. Is not that true? A. I judge so.

Q. And did you share equally in those profits? A. Why, I suppose so.

Q. Well, don't you know, as a matter of fact, whether you did or not? A. No.

Q. Selling short these 100 shares of Third Avenue? A. Well, I want to know first, whether I was Rogers.

Q. Don't you have any recollection of the transaction at all? A. No; none whatever.

Q. Well, if you did have that transaction, you were to share equally in the profits, were you? A. Yes.

Q. I show you one of the blotters of Ellingwood & Cunningham, profit 100 Third Avenue, \$1,673, Nixon & Rogers. A. No, no.

Q. Nixon and R.? A. Nixon and R.

Q. Which was a sale of that property, was it not? A. I don't remember whether that was mine or not.

Q. You will note that on the day of the sale, that is, on the 27th, the sale being entered the following day, that a check was drawn for the \$1,673 and the profit was drawn out? A. Yes, sir.

Q. Now, do you recall whether or not Mr. Nixon had an individual account with Ellingwood & Cunningham at this time? A. I do not. I suppose he had.

Q. I show you another page from the loose ledger of Ellingwood & Cunningham. You note that, S. F. Nixon, personal account, do you not? A. I do.

Q. And that it was opened on March 28 with a purchase of 400 Transportation, do you not? A. Yes.

Q. Without any deposit of margin. It was open on the 28th without any deposit of margin, was it not? A. Two days later I deposited two thousand.

Q. I did not ask you that. I am going to come to that later. Was it not opened on March 28th without any deposit of margin? A. That's right.

Q. Well now, you recall that during April, 1900, Nixon pur-

chased a thousand Transportation, as we saw a few moments ago, all told. Do you remember my calling your attention to his purchase? A. Well, Governor Bruce, I don't know about that.

Q. Do you remember my calling your attention to the fact that Nixon purchased these 400 Transportation on the 28th of March, 400 on April 9, and 200 on April 5, making all told a thousand Transportation? A. I thought that was my account.

Q. No, I am showing you Nixon's account. A. I know, but the one I had here in front of me.

Q. No, that was Mr. Nixon's account, that Transportation. A. Oh, I see. Was Mr. Nixon's account right here now?

Q. Will you look at his account? A. Yes, sir.

Q. You notice March 28, 400 shares; April 9, 400 shares more, and April 5, 200, making, all told, of his purchases a thousand shares. Did you hear my examination of Mr. Vreeland this morning, were you present at the examination of Mr. Vreeland? A. A part of it.

Q. Do you recall my showing him a letter of May 7, 1900, in which he advised Mr. Nixon to hold this stock? A. I don't remember that.

Q. Now, Nixon carried this stock, it appears from his account here, until November 9, 1900, when you took 500 shares off his hands with cost and interest. Will you explain that transaction? A. My half.

Q. That was your half and you took it up? A. I could make some mistakes here. As I recollect it —

Q. This account is entitled "Account of Mr. Nixon;" no evidence of your having any interest in this. Your interest was in the Third Avenue. A. Why, I told you I first bought on joint account with Nixon a thousand shares of stock.

Q. Yes, but I am speaking now of this thousand shares of Transportation that appears in the personal account of Mr. Nixon which I hold in front of you. A. And when he bought it I was to share one-half the profits or losses.

Q. You had a joint interest in it? A. Yes, sir.

Q. Why didn't it appear in the books? A. Not necessary.

Q. Here the other account has it, "Nixon and R." If you were the R., you had at least a dozen accounts with different individuals —

Rogers & J., Rogers & D. Now how is it, if you had a half interest in this account with Nixon, that your name did not appear at all? A. Because it is a fact.

Q. Did you ever speak to Ellingwood & Cunningham about it? A. Yes, sir.

Q. Told them that you and Nixon were jointly interested in this? A. Ellingwood & Cunningham knew it.

Q. And that is the explanation of the 500 shares that you took off of his hands in November with cost and interest? A. And the reason I put up the margin.

Q. Did you ever inquire of Ellingwood & Cunningham why this account was kept in Mr. Nixon's name, and not in yours and Nixon's jointly? A. No, sir.

Q. What became of your 500 shares; what did you do with your 500? A. I must have sold it.

Q. Well, that eliminated your interest in Transportation for Nixon, did it not; the other 500 was Nixon's? A. Yes, as I understand it.

Q. Was that the fact at the time? A. As I remember it, it would be; yes.

Q. But it appears from this account here that on August 2d, 1901, you deposited \$1,000 to the account of Mr. Nixon. Why was that? That was after you had taken out your 500? The account was then solely Nixon's? A. Where is that?

Q. August 2d, 1901, there it is; from G. T. Rogers, \$1,000? A. That was when, you say?

Q. August 2d, 1901? A. After the stock had been sold.

Q. That was after you were out of Nixon's Transportation. You had taken your 500, paid for it, cost and interest, you say? Why, did you give the thousand dollars to Nixon at that time? A. I don't know; I gave it to him, quite evidently. My name is on.

Q. But you don't know why? A. I can't remember.

Q. Was it cash or check? A. I can't tell you.

Q. Can you give us any facts in regard to the transaction? A. One minute. Not that one thousand dollars —

Q. You can't? A. No.

Q. Now, the thousand shares, half of it belonged to Nixon, and one-half of them were yours, Nixon's half cost \$11,962.50; he got

\$13,199.01, making a profit of \$1,236. Now, he had deposited during that time—you had deposited \$2,000 from him on March 30th. He deposited \$2,000 on March 8th. These were in the year 1900. On July 17th, 1901, he deposited \$1,500, and on August 2d, 1901, you deposited \$1,000, making a total deposit of \$6,500. He withdrew from this account on October 23, 1901, \$6,000; September 10th, 1901, \$792.58, making a total withdrawal of \$6,792.58. Now, of this \$6,500 which was credited Nixon, \$3,000 came from you. Two thousand, you say, was for your portion of the purchase price of the thousand shares which you were jointly interested in, and what was the other thousand for? A. I don't remember.

Q. Where did it come from? A. It came from me, G. T. Rogers.

Q. This \$2,000 that you put up for him on March 30th, as you testified, where did that come from? A. It has my initials; it came from me.

Q. Didn't you get it from Robinson? A. I cannot tell you whether I got that \$2,000 from Robinson or not.

Q. That would be important to know, whether these \$2,000, the only deposit of margin that was made on this large purchase of Transportation, came from Mr. Robinson or not? A. I do not see why it should come from Robinson at all.

Q. Unfortunately, the deposit book of Ellingwood & Cunningham is missing. If you could supply the information, it would be of value to the Committee, Mr. Rogers. A. If I knew it, I would be very glad to do it, but my recollection is that I put that up with my own money.

Q. Now, it appears from your account that on the 21st you deposited \$2,000 margin, the check of which is missing? A. Yes.

Q. Yes, and on the 30th there is \$2,000 credited to the account of Nixon; does that refresh your recollection; on March 21st, margin, \$2,000; that is your own account? A. My own account.

Q. Yes, and then on March 30th, \$2,000 as you will recall from the account of Nixon, which I showed you was credited to Nixon, margin; does that refresh your recollection at all as to whether or not that came from Robinson? A. No, no reason why it should come from Robinson.

Q. You will recall that the \$2,375, with which Bedell's Transportation was paid for, came from Vreeland? A. It came from me.

Q. It came from Vreeland, did it not? A. That makes no difference; it came from me.

Q. You got it from Vreeland? A. Yes, sir.

Q. That is the reason why I inquired when this \$2,000 was deposited to the credit of Nixon, whether or not that came to you from Robinson? A. I would say no.

Q. Now, do you recall whether or not the \$2,000 which you deposited as margin, the \$1,000 which went to his credit in August, 1901, was all the money you credited to Nixon's account? A. It ought to have my initials or my name back of it.

Q. Do you recall any other payments to him? A. In the books or otherwise?

Q. From your recollection now? A. I have given Nixon money beside that.

Q. What others? A. What I have given — I can't remember now.

Q. Give me all you can recollect. A. I have sent it to his territory out there, his county.

Q. To whom did you send it? A. Usually to him.

Q. To whom did you send it? A. Usually him.

Q. To him personally? A. Yes; for him.

Q. Did you send it by check or draft? A. I don't remember.

Q. What years did you send it? A. I don't remember.

Q. What amounts did you send? A. Why, I either sent it, or sometimes I put in through here for him to use for campaign purposes.

Q. Well, these moneys that you credited to his account, they went into his general trading account, did they not? A. Some of them.

Q. Nothing to indicate here that they were anything else than for his private purposes, is there? I call your attention — you will remember the \$2,000 in March; you will remember the thousand in August. This is 1901. Now, there is November 1st, 1901, check S. F. Nixon, \$1,000. A. I guess I sent that to him. That is my account.

Q. On your account? A. Oh, yes, I sent that to him no doubt.

Q. Do you recall any other besides this \$4,000 in 1901? A. I do not think I ever sent to Nixon as much as that in any one year \$4,000.

Q. Think not? A. No, sir.

Q. What do you think your annual payment to Nixon was? A. Not to him, but to his county committee.

Q. About how much per annum? A. Well, for a year or two I think it was \$1,000 and maybe \$2,000 a couple of years; I should give a guess. It was to go to his county for campaign expenses.

Q. You did not send it to the treasurer of his county committee did you? A. Not necessarily.

Q. If you were going to make a contribution to the county committee of Chautauqua County for the uses of Mr. Nixon, wouldn't you send it to the treasurer of the county committee? A. Because I would give it to him, that would be the best way.

Q. And easiest way? A. And easiest way.

Q. Why didn't you send it to him instead of crediting it to his account with Ellingwood & Cunningham? A. I did, in some instances.

Q. Why didn't you in these instances? A. That was the easiest way.

Q. Is that your only answer? A. Yes, sir.

Q. Or was that the safest way? A. How do you mean, the safest way?

Q. Because it is inexplicable to me that if you wanted to make a political contribution for the benefit of any candidate for office that you did not make it fair and above-board to the treasurer of the county committee, that you did not send it to him in many instances, but, in almost every instance, it was placed to his credit in the trading account in a brokerage firm. Now, can you explain it unless it was the safest way? A. Well, perhaps that might be.

Q. That is what I thought. Now, you recall now that I have refreshed your recollection in regard to the \$2,000, the \$1,000 in August, the \$1,000 on November 1st, do you recall having sent Mr. Nixon some money in October of that year prior to the time the last thousand was sent? A. I do not.

Q. I show you one of the check books of Ellingwood & Cunningham, check stub 24256, October 24th, 1900, S. Fred Nixon \$1,000, account of G. T. Rogers? A. That is right.

Q. Then that makes \$5,000 that you sent him? A. No, let me

Q. Taking them up in order. There is the \$2,000 deposited as margin on March 30th, 1900; there is the \$1,000 from G. T. Rogers on August 2nd; there is the \$1,000 on October 24th; there is the \$1,000 on November 1st? A. Now, that thousand dollars and that thousand dollars, no doubt, were his contribution? The balance in some way Mr. Nixon has settled with me for. Everything between us was settled except what I sent for campaign contributions.

Q. Which do you think are contributions? A. These two items.

Q. Which two do you mean? A. That check.

Q. The November 1st, and the October 24th? A. I should think so.

Q. You think the one in March was margin? A. I should think

Q. And the one in August, you think was what? A. I think that was margin.

Q. You think that was margin? A. I should think so; I cannot tell.

Q. That was after you had taken out your 500 and you were no longer interested with Nixon in this Transportation? A. I don't know how it was done, but I sent him \$2,000.

Q. This is merely a matter of supposition whether this was a political contribution, or not? A. No, that was, as near as I can tell—that check, and that one, must have been contributions.

Q. They were moneys that were sent personally to Mr. Nixon? A. Personally, or given to him.

Q. Sent to him personally? Or given to him? A. I think so.

Q. Now, again, if you were making any contribution to his political campaign, why didn't you make it to the treasurer or the proper authorities there? A. I preferred to do it this way.

Q. And the August 1st thousand dollars, you haven't any explanation off? A. I think Mr. Nixon's account and mine was all cleaned up so far as we were concerned financially, except what I have sent to him in the Fall or some other time.

Q. That was the last, then, in 1901? A. No, I think I sent after that.

Q. That is \$5,000 now, in 1901? A. No; I did not send him \$5,000; I sent him that \$2,000, and I must have sent him more.

Q. August 1st was another thousand dollars, and the margin you put up, and the other thousand — A. I just told you, \$2,000 of it is all I can recollect which was in any way a campaign fund.

Q. What explanation have you made of the thousand dollars of August 1st? A. None; except he must have paid me it back; he must have paid me; no question about it.

Q. He must have? A. Yes, sir.

Q. Have you any recollection about it? A. No, sir.

Q. You do not seem to have any recollection about the transaction, but you say he must have paid you back? A. I am not losing money that way; I am getting my money. If I put it up for him, he paid me.

Q. You are not putting up, you are giving him a thousand dollars. A. No.

Q. Or transferring a thousand dollars to his account, are you not? A. (No answer.)

Q. Now, I call your attention to your account, November 4, 1901; will you please look at it. You see, you are credited with \$2,800, are you not? A. Yes, sir.

Q. On November 4th? A. Yes, sir.

Q. Where did that come from, have you any idea? A. I don't know.

Q. Didn't it come from Robinson? A. I don't know; I should say not.

Q. I show you a copy of Mr. Robinson's account with the Morgan Trust Company, November 4th, \$2,800; is that the \$2,800 that you received on that day? A. On the same day?

Q. Yes? A. I think it must have been.

Q. Now, you will recall that on the 1st of November, you paid Nixon \$1,000; do you recall that? A. I gave him a thousand.

Q. Yes. Now, you notice that on the 4th, November 4th, the same date which you are credited this \$2,800 with that came from Robinson, there are five checks, \$400, \$300, \$200, two \$500, making in all, \$1,900; what were those checks drawn for? A. What were they drawn from?

Q. For? A. I cannot tell.

Q. To who were they drawn? A. I could not tell you.

Q. Were they not contributions to someone? A. You may have the checks there and refresh my memory; I cannot —

Q. Do you recall? A. No.

Q. Do you recall them? A. No, sir.

Q. Unfortunately, the check stubs of that particular date are missing, and therefore I cannot aid your recollection, but in view of the fact that you received the \$2,800 from Robinson on the 4th of November, what would your recollection be in regard to the drawing of those five checks for those amounts and the thousand for Nixon? A. It must be that someone got the money.

Q. Weren't they political contributions? A. Naturally.

Q. So far, counting the \$2,000 deposited, as margin, \$5,000 has gone to Nixon? A. Yes.

Q. Do you recall any further payment to him? A. That is as it was before, the same situation.

Q. Do you recall the account with Ellingwood & Cunningham, known as "Hackley Special?" A. Yes, sir.

Q. \$7,500 deposited? A. Yes, sir.

Q. From the Street Railway Association to Mr. Hackley, special account, do you recall that? A. Yes, sir.

Q. Now, give us all the facts in regard to that? A. In regard to that account?

Q. Yes. A. That was part of my own money and part association money.

Q. How much of it was your money? A. I cannot remember.

Q. How much of it was association money? A. I cannot remember.

Q. Part of it was your money, part association money; how do you know? A. Because I advanced money to the association out of that.

Q. To whom did you advance this? A. The same thing as these other payments; political contributions and campaign funds.

Q. Who did it come from, Mr. Cole? A. It came from Mr. Cole.

Q. Down to Ellingwood & Cunningham? A. That would reimburse me and others.

Q. What? A. Part of that was to reimburse for the deficit we have been talking about.

Q. I am talking about the \$7,500 that went straight to Hackley Special? A. That is part of it.

Q. Don't let us get this mixed up with the deficit or anything like that. What did this \$7,500 that Cole sent to Hackley—Hackley was a mere clerk, wasn't he? A. Yes.

Q. Why was it sent him? A. Because, if I remember right—I don't know that I would be there; I did not know as I would be there, and had him receive it and take care of it.

Q. He says he never heard anything about it and never knew about it? A. I know he does.

Q. Did you talk with him about it? A. I don't know whether I ever discussed it with him or not.

Q. Why was it placed to the credit of a clerk under the head of "Special account," using a dummy; was that considered the safest way? A. It must be that there was another account; I had other money.

Q. That is not an answer? A. I had so many.

Q. And that is not an answer, that you had so many accounts; you may have had; you could have had a Rogers and Hackley account, if you wished to; why was this money sent by Mr. Cole, the treasurer of the Street Railway Association, to a clerk in Ellingwood & Cunningham's office, placed to his special account, checked out, and he not have any knowledge of it whatsoever? A. I cannot tell you. There were reasons for it. I can't tell.

Q. What? A. I give no reason for it.

Q. You have no explanation? A. No.

Q. What was done with the \$7,500? A. Part of it I used personally.

Q. How much of it did you use personally? A. Well, the account was there for a year. I must have used maybe half of it; whatever belonged to me.

Q. How much belonged to you? A. I cannot tell that now.

Q. If it belonged to you, why wasn't it sent to you? A. It was, wasn't it?

Q. No. A. In a way.

Q. No, it was sent to Mr. Hackley direct. A. In a roundabout way to me.

Q. Why in a roundabout way, if it belonged to you? A. I be-

lieve I might not have been there, so that was the best way to send it.

Q. Even if you were not there, you were there and had a special partner, Mr. Cole, who could have remitted to Ellingwood & Cunningham with instructions to credit to your account; why send it to this young boy who was used as a dummy? You have not any explanation? A. No, sir.

Q. Just look at the account; \$7,500 was received on July 13th, 1903. On July 23, 1903, you see a withdrawal of \$500? A. Yes, sir.

Q. Do you know who that was to? A. No.

Q. That was to Senator Malby; can you tell me the circumstances of that? A. Yes; I can tell you that.

Q. What is it? A. Malby had an account with us for a number of years; I took him there, and he was kicking vigorously about his interest, they charged him six and eight per cent., or the street rates, and he used to have four per cent. or something, and I told Mr. Cunningham I would credit him \$500 and that that would appease him, and later on, Mr. Cunningham adjusted the whole thing.

Q. Why didn't you credit it from your personal account; why from the account of this dummy? A. That was my account; it was my money; nearly half of that money was my money.

Q. Where had it come from? A. I advanced it.

Q. To whom had you advanced it in the association? A. Contributions, I told you, political contributions.

Q. I know, but this particular \$7,500 came right out of the treasury of the New York Association from Mr. Cole, and was sent, not to you, but to Mr. Hackley? A. \$10,000 more was sent the same way.

Q. That he knew about; that you came to him and spoke about. This he never knew about, so he testified. He said you had never spoken to him about this account; that he never knew there was such an account in the office? A. I heard him say that.

Q. If you were going to credit Senator Malby with \$500, on a protest he had made of interest, why didn't you credit him on your account? A. Because I had more money in that account than any other, very likely.

Q. Why not from the account of Ellingwood & Cunningham they were responsible, were they not? A. Yes, they did it right afterwards.

Q. How? A. They credited him \$5,000 afterwards.

Q. For what? A. Interest overcharge.

Q. Why were these overcharges of interest, where were they? A. That Mr. Cunningham has explained; Mr. Malby understood that he was to have it at a certain rate; they had been charging the street rate to him.

Q. Isn't it a rule of the Stock Exchange that a brokerage house must charge the street rate? A. That I don't know.

Q. You notice here, on August 17th, \$300; who was that given to? A. I don't know.

Q. You notice on September 14th, \$2,000; to whom was that given? A. I cannot tell you.

Q. That was given to Mr. Nixon? A. Yes.

Q. Why? A. Very likely a contribution.

Q. Very likely; not very likely; what was it? A. As near as I can recollect.

Q. A contribution to what, his campaign fund? A. Maybe; it may have been something else; I cannot tell; my recollection is it was.

Q. If it was a straight business transaction, why didn't it appear straight on your account; why put it through a dummy? A. Because that was the way I did it.

Q. Was that the safest way? A. I won't say that.

Q. The most prudent way? A. I won't say that.

Q. The most convenient way? The most convenient that may be so that I would not get this account mixed up with my other speculative account; yes.

Q. Don't you think you really ought to have told Mr. Hackley something about it, that you were using him as a dummy? A. I don't know.

Q. Here it was as a special account in the firm, a young boy getting \$40 a week; don't you think you ought to have told him? A. I don't know as it done him any harm.

Q. Do you think it done him any good? A. (No answer.)

Q. There is September 21st. Now, I have refreshed your recol-

lection with regard to the \$500 and the \$2,000. Who got the \$1,000 on September 21st, seven days after Nixon got his \$2,000? A. I cannot tell you. May I ask who it was? I would like to know.

Q. I would like to know, too, and if the records of Ellingwood & Cunningham for these dates were not missing we could tell. October 2d, \$150, do you recall that? A. No.

Q. October 9th, \$500, do you recall that? A. No. If you will tell me, I can tell you.

Q. I don't know who. A. If you will tell me, Governor, I will try and help you out. I am not trying to dodge you.

Q. I know, but you were the man. I was not there, you were there. You made these transactions; you should tell this Committee? A. If you will refresh my mind.

Q. I know, but I have refreshed your mind. There is October 21st, \$2,000, do you recall that? A. I do not.

Q. That went to Mr. Goodsell; does that refresh your recollection? A. Yes.

Q. Why did it go to Mr. Goodsell? A. Maybe for the same purposes.

Q. Why maybe? A. It naturally would be.

Q. Not naturally would be, unnaturally would be? A. No from me; that was what I was there for.

Q. You were there for what? A. To do just what I was doing.

Q. Making contributions to these different members of the Legislature? A. Awards to their committees.

Q. However, they did not know of it going to the committees; that went to Mr. Goodsell? A. It got into politics. I do not think I ever gave a member of the Legislature a dollar, except Mr. Bedell \$2,500, that did not go where it was intended for, in politics.

Q. It did not start in that direction, at least? A. It had a good start, — in the nominee.

Q. In each instance, this money went to the credit of the general trading account of the individuals, and there is nothing to indicate in any of these accounts that it was given for any other purpose, and there is no evidence before this Committee that one dollar of it ever went to any political party, except the testimony of the man that he thinks it was for political purposes. A. No, I do not say think. I say it was.

Q. Now, the 27th, \$500; have you any recollection in regard to that? A. No.

Q. Have you any recollection in regard to the other money? A. No.

Q. How is it you have no recollection in regard to any withdrawals, except those in which I have refreshed your recollection by showing withdrawals? A. Because naturally my name was on those other accounts.

Q. Now, these contributions, this contribution to Nixon, for instance, was in September. Were you taking contributions to Mr. Nixon's campaign fund in September? A. I would not be at all surprised.

Q. Well, he never withdrew it until in December, long after the election. If it were a campaign contribution, why made in September and not withdrawn until December? A. I can't tell you.

Q. That is inexplicable, also? A. Yes.

Q. Now, you were acquainted with Senator Raines, were you not? A. Yes.

Q. And he was leader of the Senate. Now, it appears from his account, which I have shown you, that he was carrying 600 Transportation in February and April, 1901, and it appears that the account opened the same as Nixon's did, without a margin, and that on May 10th he deposited, 1901, \$5,000. This was a credit in cash. Do you know anything about this cash deposit? A. Nothing whatever.

Q. Did you ever have any connection or conversation with Senator Raines in regard to his dealings in Transportation? A. I won't say that. I may have had conversations about his Transportation.

Q. Did you introduce him to Ellingwood & Cunningham? A. I did not. I don't know.

Q. Did you know anything in regard to his purchase of these 600 shares of Transportation and this deposit of \$5,000 on May 10th, 1901? A. None whatever. It may appear here that I wrote to someone about his Transportation.

Q. Does it refresh your recollection, my calling attention to the fact that the same day this deposit of \$5,000 was made you drew \$8,000 cash from Ellingwood & Cunningham? A. No.

Q. What were the circumstances surrounding the withdrawal of the \$8,000 on May 10, 1901, do you recall that? A. Well, there is \$7,000 —

Q. I am asking you about this? A. Well, I am answering about that. None whatever.

Q. On June 3d, 1900, Senator Raines deposited \$8,000, making the eight in all. Does that in any wise refresh your recollection? A. Not a bit.

Q. Now, you knew James T. Rogers, did you not? A. Yes.

Q. And he was on the Railroad Committee in the Assembly in 1900? A. He was there one year or two years, I don't know which.

Q. Well, he was on the Railroad Committee in 1900, was he not? A. Well, you have the record there.

Q. Do you remember his having an account with Ellingwood & Cunningham? A. Oh, yes.

Q. You bought for him 100 Transportation, did you not, in 1900? A. I did.

Q. And deposited how much to his credit? A. I think it was \$500.

Q. I refer you to the Legislative Manual of 1900; was he not a member of the Railroad Committee of the Assembly of that year? A. Yes.

Q. Now, this purchase was made on April 19th, 1900. You said in your first examination that your recollection was then that that was when you first heard of Transportation, but later you recalled having in March purchased with Mr. Nixon. Why did you deposit this \$500 for Mr. Rogers? A. Accommodation to him.

Q. Did he afterwards repay you? A. He did.

Q. When? A. I can't tell you. When he got money on his stock. I can't tell you.

Q. How did he repay you? A. I don't remember that.

Q. Do you remember the circumstances of repaying? A. I think it was in Binghamton that he repaid me. He repaid me, however. He owes me nothing.

Q. Do you remember how long after this purchase was made he repaid you? A. No.

Q. Well, now, can't you search your memory and tell us the cir-

cumstances of this repayment? A. I would have told you if I could, before.

Q. Did he request you to make these advances? A. Yes.

Q. Now, don't you know when and where he repaid it? A. I do not.

Q. It is very easy, Mr. Rogers, for you to sit there, and when I say, did he repay it? "Yes." When? "I don't know." Under what circumstances? "I don't know." A. That's true.

Q. You said it was paid in Binghamton. 'Can't you give me the facts? A. No, I can't. Ask him.

Q. You knew Senator Goodsell very well, did you not? A. I did.

Q. Now, Senator Goodsell, on April 17th, 1900, is credited with \$300, a part of this money which came from the H. H. Vreeland check. Why was that money credited to his account? A. I can't tell you. Very likely I owed him that much money, or something.

Q. Oh, now, I don't want any generalities? A. I can't tell you. I must have owed him that much money.

Q. You say you did owe him that much money? A. I think I did.

Q. Do you remember for what purpose? A. No. He might have loaned me that much money some time.

Q. Now, Senator Goodsell testified — A. It might have been borrowed money.

Q. I don't care, Mr. Rogers, for what it might have been. It might have been a great many things. The Committee is only concerned with the facts. Senator Goodsell, when he was examined in regard to this transaction, said that that was \$300 that he paid, he thought, in the station at Albany, to a man whom you owed, whom you described or pointed out to him, and told him to pay. Do you recall the facts? A. I would not dispute it at all. It might have been so. I have done those things more than once.

Q. Well, if you owed this man, why did not you pay him? A. Very likely I didn't have the cash with me.

Q. Senator Goodsell could not recall the man, neither as to his looks or appearance, or what his name was. Can you give us that information? A. No, I cannot.

Q. Well, if Senator Goodsell paid \$300 for you, how did you

come to repay Senator Goodsell out of the proceeds of this check from H. H. Vreeland? A. Why, I placed it to his credit in the bank. He could draw it whenever he wanted to.

Q. Now, you placed, also, to the credit of Bedell at that time \$2,375 for 200 Transportation. Did he repay it? A. Yes, sir.

Q. When? A. I don't know, except everything between Bedell and I was paid and settled up except \$2,500. I took Mr. Bedell's note, I think, for \$2,500 or \$3,000, and I carried it until it was outlawed. Everything else was adjusted in settlement of our account.

Q. Are you quite sure that is true, \$2,375 for the 200 Transportation? A. Why, yes.

Q. Have you any present recollection of it, or is it just one of those things that you should say so? A. No, because everything was settled.

Q. I don't want to know about the final settlement. I want your present recollection, if you have any, in regard to this specific transaction? A. No, not any more than I have told you, if you don't want that. I am telling you about the final settlement.

Q. You have no recollection of this specific transaction? A. Only that I got my money back.

Q. But you don't know when or where or how? A. No.

Q. Now, on October 12th, 1900, Senator Goodsell was credited with \$500. He testified that he did not know whether you put that up for him or not. Did you, on October 12th, 1900, place \$500 credit to Senator Goodsell's account? He said that he was not sure whether you put that up for him, or whether he deposited it himself. What is your recollection? A. I haven't any recollection.

Q. Have you any recollection? A. I have not got any recollection. I can't remember that.

Q. Well, on April 23d, 1901, Mr. Goodsell received \$9,000, which came from Robinson. Have you any recollection in regard to that? A. Yes.

Q. Give us your recollection in regard to that? A. 1901?

Q. Yes. A. Well, the year before that the State Committee wanted some money from us. We didn't have any.

Q. From who? A. From the association.

Q. Street Railway Association? A. Yes.

Q. You are speaking now of the Republican State Committee? A. Yes, Republican State Committee. I told them I could not do it. Mr. Goodsell told me that if I would reimburse him he would advance, I think, \$10,000 — I don't think it was nine — \$10,000. I promised him that if he would do it I would reimburse him, but he would have to wait some time.

Q. Do you say that Senator Goodsell volunteered this, or did you go to Mr. Goodsell and ask him to do it? A. That I don't remember. I think he was with Mr. Fox there in the room, I think he was, and afterwards we all walked out.

Q. Did you give Senator Goodsell any obligation? A. No.

Q. Showing that he had advanced this \$10,000? A. No, I don't think I did.

Q. Senator Goodsell has the reputation of being a very careful business man? A. Always has.

Q. Did not it seem strange to you that he did not want some memorandum or other that he had advanced \$10,000 for the Street Railway Association of the State of New York? A. No.

Q. Well, if you had happened to have passed away during the year the Senator would have had no proof that he had ever advanced the \$10,000 for the association, and he, just out of the goodness of his heart, offered to advance to this Street Railway Association \$10,000, did he? A. Well, I guess for the party, too.

Q. For the party? A. For the party. Possibly that might have had some influence in it.

Q. Then, out of the goodness of his heart, and for the party, he was willing to advance \$10,000, dependent on the repayment by this association, having no obligation or memorandum as evidence of the indebtedness? A. He ran no risks.

Q. Ran no risks? A. He got his money.

Q. Well, when did you repay him? A. I think it was some time after that — I can't tell you the date — the next year.

Q. Do you recall how long after? A. No.

Q. He advanced it, and how long did he have to wait for his money. Did you pay him before the election? A. Oh, no; the next year.

Q. Next year, and what time the next year? A. That I can't remember.

Q. Had the Senator become anxious in regard to the payment?
A. Well, slightly, for some time.

Q. Had he said anything about it? A. He had.

Q. What efforts had you made to repay him? A. I gave him the money.

Q. From whom? A. The association — the members of it.

Q. And do you remember when you got it and paid him? A. No.

Q. Well, he was paid \$9,000 on April 23d, 1901, which was the day the Legislature adjourned? A. I don't remember at the present time.

Q. Can you explain in any way the coincidence that he should receive this \$9,000, which you had owed him from the previous summer, on the very day the Legislature adjourned? A. I cannot.

Q. Where did the nine thousand come from? A. The Railroad Association.

Q. It came from Robinson, the treasurer, did it not? A. Now, it might have come from him, and it might have come from advances made by some of us.

Q. Well, the evidence here shows that it did come from Robinson? A. Well, then it did.

Q. Now, do you think that those were advances made by you and other parties? A. I don't think — if you have the evidence of the association, then it was advanced.

Q. Well, if advances were made, would they not be made to the treasurer of the association? A. No.

Q. Then October 22d, 1902, Goodsell got \$5,000. What was that for? A. That, I don't know anything about.

Q. Have you any recollection in regard to it? A. \$5,000? Not from me.

Q. The Senator's evidence, if I recall it correctly, was that he thought it came from you? A. Well, I don't think so.

Q. Well, on October 7th, 1902, a short time later, he received \$2,500 — November 7th, rather? A. I think that might have come from me, possibly.

Q. What was that for? A. He used that in his county or district. He was State Committeeman, wasn't he?

Q. I don't recall whether he was or not. Was he? A. I think he was.

Q. If you were going to make any contribution to the State Committee, why did not you go over to the Fifth Avenue Hotel and make them? A. Oh, I have been there.

Q. Oh, I know, but that is the reason that it seems strange that you did not go again. A. I have been again.

Q. Then why did not you go in this instance? A. I wanted to do it directly.

Q. You wanted to do it direct? A. Yes.

Q. Then why did you place it to the credit of his general trading account with Ellingwood & Cunningham? Why didn't you give it to Mr. Goodsell? A. I did. He got it whenever he wanted it, then.

Q. You placed it to his trading account, didn't you? A. I don't know. The evidence shows it.

Q. Well, Mr. Goodsell's account shows that you did. Here it is. You notice, under the date of November 7th, 1902, Mr. Goodsell's account and G. T. Rogers, \$2,000? A. Yes.

Q. And do you notice before that, October 22d, 1902, \$5,000? A. I don't know anything about it.

Q. It also went to his general trading account? A. I know nothing about it. No, I know nothing about it.

Q. The \$2,000, of course you recall, went to the general credit of his trading account, and your own explanation of all these things is, Mr. Rogers, as I call them to your mind one by one, political contributions, political contribution, political contribution? A. Correct.

Q. No explanation why the contributions were not made direct to the treasurers of committees, or not made direct to the individuals, and so they were put through a trading account of Ellingwood & Cunningham. Now, this \$2,500 came in two checks on the Morton Trust Company — \$2,000 rather, not \$2,500, one on November 3d for \$500, and the other for \$1,500, from Robinson. That was from the treasurer of the Street Railway Association, was it not? A. Mr. Robinson was treasurer.

Q. Now, following along, it appears from Mr. Goodsell's account that on the following January 30th he received \$2,500 cash. Do you know anything in regard to that? A. I do not.

Q. And you will note that on March 9th he receives \$500 cash. Do you know anything in regard to that? A. I do not.

Q. And you note that on October 21st, cash, Hackley Special, concerning which you have testified, he received from you \$2,000?

A. It must have been.

Q. Now, it appears from the evidence that this \$500 on March 9th came from the treasurer of the association, Mr. Robinson. Do you know anything in regard to that? A. I don't understand you. You say it shows that it did come from there?

Q. The evidence here before us shows that this \$500 on March 9th came from Robinson's account in the Morton Trust Company, \$500? A. That might be. I say, that might be.

Q. Well, it is? A. No, I don't think it; no, sir; association ——

Q. Why was the association contributing to Mr. Goodsell in March? Was that a political contribution? A. Oh, that might not have been him — that might have been my own money.

Q. Well, it came from Mr. Robinson, then? A. I don't care.

Q. Why were you paying him \$500 in cash? A. I advanced money nearly every year to the association.

Q. Why were you paying \$500 to Goodsell in cash? A. It might have been borrowed money or something — I don't know.

Q. Might have been? I don't care what might have been. Have you any present recollection in regard to it? A. No.

Q. There appears here a letter from Ellingwood & Cunningham to Mr. Goodsell, July 23d, 1903, telling him if he will call there will be \$5,000 there for him. Do you know anything about that? A. That bothered me a good deal. I have looked all over to find out what that means.

Q. What does it mean? A. I don't know.

Q. Do you know where that came from? A. It don't say. It says, call and get it? Is that what it says?

Q. Yes, it says, if he would call there would be \$5,000 there for him? A. I don't know anything about the letter or the \$5,000. I have racked my mind in every way I could to find out.

Q. It appears here that Senator Goodsell received from different members of the Legislature 1,400 shares of Transportation in 1901, a receipt of which was in May, 1901 — did you know anything in regard to that transaction? A. I knew it was so.

Q. The stock was taken at 14, and was then selling in the market at 4. Give us what you know in regard to that transaction?

A. I don't know anything about it, only that that was a fact.

Q. Did you know it to be a fact at the time? A. When?

Q. At the time it occurred? A. I think the next day after it was done I heard of it, with the firm.

Q. Where did you hear that from? A. In the office.

Q. Who told you about it? A. I think, Mr. Cunningham.

Q. What did he say? A. I don't remember now, only he said it had all been taken up, or he got a remittance for it.

Q. Didn't it strike you as extraordinary that anybody was picking up 1,400 shares at 14, when it was selling in the open market at 4, and the next month went down to 1 1-2? A. Not if I had to book for it.

Q. And didn't it strike you as singular that this stock was made up entirely of members of the Legislature, the whole 1,400 shares, and all of them were men who had gone into the stock with your knowledge or at your suggestion, some of them? A. Oh, no, not at my suggestion.

Q. Well, J. T. put up 100? A. That was at his request.

Q. Well, he put up 100. Nixon put up 500? A. That was not at my suggestion. Mr. Nixon asked me to buy that stock. Now, go on.

Q. Goodsell put up 100, Bedell put up 500? A. That I know about. I bought 100 of that. That's all I know about it.

Q. Didn't you buy 200? A. No, I bought and paid for one for him.

Q. Didn't you buy and pay for 200? A. No, sir. That, I don't know.

Q. \$2,375? A. Oh, yes, that's true.

Q. Then nearly all these transactions you had been familiar with? A. I knew of them.

Q. You was in partnership with Nixon at his request. You bought it for Rogers at his request? A. Yes, sir.

Q. You paid for it for Bedell? A. At his request.

Q. And knew about Goodsell's having it? A. Name the rest.

Q. Do you recall that Col. Baxter had 200 shares? A. No, sir, I did not know it.

Q. What? A. I don't remember anything of it at all. And let us have them all. I don't know still that Allds owns any.

Q. You did not know anything about 200 that Colonel Baxter had? A. I don't think I did.

Q. Did not you run back through his account with Ellingwood & Cunningham? A. I did not.

Q. Did not you know anything about his account? A. No, sir.

Q. Keep yourself familiar with his account? A. No, sir. He ran his own account—or his son, Charley. In fact, he spoke to me once in a while about things.

Q. Now, you want to modify, that you told me that you knew nothing about his account and he attended to his own account? A. He attended to his own account.

Q. Do you want to modify that? A. To my best recollection, I knew nothing about it.

Q. You were very positive — almost indignant — that I should inquire about those things. You said he knew about his account? A. Yes, he did.

Q. Now, do you wish to modify that? A. I did not run his account; no. You have got some letters there for stocks.

Q. I call your attention to the copy of a letter written by Ellingwood & Cunningham to Mr. A. E. Baxter, dated July 11th, 1899, Elmira, New York.

“DEAR SIR:

“Yours of the 10th received. Do not hesitate to ask any questions you want.

“The present complication arises from the anxiety of our mutual friend, Mr. G. T. Rogers, to play a safe game for you. In order to sell 100 shares of Manhattan at 19 1-2, to stop after selling at 120, means that when the stock has advanced to 120, in order to get the benefit of that advance an order is entered to sell the stock at 19 1-2 if it goes there. In your case the stock advanced to 120 3-4 and Mr. Rogers sold it out, expecting to buy same back the next time he had definite information on it.

“We enclose you notice of trade.

“Yours truly,

“ELLINGWOOD & CUNNINGHAM.”

Now, did you know anything about Mr. Baxter's account? A. To that extent.

Q. You were playing a safe game for him? A. I bought very likely 100 shares of stock for him.

Q. Now, he says, in order to play a safe game for him. Again, March 9th: "Dear Sir: We beg to acknowledge receipt through Mr. G. Tracy Rogers of your check for \$500, which we have passed to the credit of your account as margin. Will keep you advised of any trades that Mr. Rogers makes to your account. Yours truly. Ellingwood & Cunningham." A. Have you any more?

Q. Now, you answer my question. Now, do you wish to modify your evidence that you knew nothing about Mr. Baxter's account, or he attended to his own account? A. Beyond that?

Q. Well, there is not much beyond that? A. Oh, yes, he had an account there for years. I knew nothing about it.

Q. Well, that is as far as we can find any records of Ellingwood & Cunningham. If they were all here, perhaps I could refresh your recollection further. Now, you were well acquainted with Mr. Bedell, were you not? A. Yes.

Q. I have examined you in regard to the \$2,375 which Mr. Bedell received April 17th, 1900. Now, on May 1st, 1901, Mr. Bedell received \$8,500 from Robinson, the secretary and treasurer of the association. Do you recall the circumstances of that? A. I do not.

Q. On the 3d of May, the same year, received \$7,500 more, making \$11,000. Do you recall that? A. Who, me?

Q. Which came from Robinson through you? A. I don't know anything about it.

Q. January 23d, 1903, Mr. Robinson, a thousand — do you recall that? February 6th, 1903, from you, \$750. Do you recall that? A. No.

Q. Why, these payments to Bedell, aggregating thousands of dollars, in all, \$17,000, why these payments? A. Not from me.

Q. From you or from Robinson? A. No.

Q. Well, from you or from Robinson; why these payments to Bedell? A. I can't say.

Q. They are all in evidence here. Have you any explanation? A. No. Mr. Bedell has been on the stand — I don't know what he has to say about it — I don't know.

Q. What do you have to say about it? A. Oh, I can tell.

Q. Well, you have explained, or endeavored to, the \$2,375 from the Vreeland check — that was the 17th of April. May 1st he re-

ceived \$7,500 from Robinson. Did you know anything about it?

A. I can't tell you.

Q. May 3d the same year he received \$7,500, which came to Robinson through you. Do you have any recollection of that? A. No.

Q. Now, on January 23d, 1903, a thousand from Robinson. Do you have any recollection of that? A. No.

Q. As I said before, covering a period of a few years, there are over \$17,000. Now, Mr. Rogers, why these payments from the Street Railway Association to Mr. Bedell? A. Well, was it from the association?

Q. Yes, from you and Robinson, the treasurer. He all this time was Chairman of the Railroad Committee in the Senate, was he not, and a member of the Committee on Rules; is that correct? A. Correct; yes.

Q. Now, there was a transaction passed through the account of Mr. Bedell by which \$600 was transferred to Mr. Schneider, a member of the Assembly from Erie county, a member of the Committee on Railroads. Do you have any recollection in regard to that? A. None whatever.

Q. Well, now, having taken up these transfers of money to Nixon, to Bedell, to Goodsell and to Malby, can you give me any others? Were there any others — one to Schneider — can you give me any others? A. I don't recall.

Q. Do you have any recollection of having credited the account of any other member of the Legislature with money except those to whom I have referred? A. I do not.

Q. Do you have any recollection of having credited the account of any of the members of the Committee on Railroads in the Assembly in 1902? A. I have not.

Q. Will you just look at the Committee on Railroads for 1902 and tell me whether you can recall ever having paid, directly or indirectly, by purchase or otherwise, any moneys to any members of the committee during that year? (Witness examines list submitted to him by counsel.) A. Why, I might have helped some of those gentlemen in politics.

Q. What is the name? A. I can't remember that now. I can't remember all those things.

Q. Can you give us your best recollection? A. I may have helped some of them; I did, no doubt.

Q. Can you recall the ones you helped? A. No, I can't now. I may have helped some of them in their campaigns.

Q. But you have no definite recollection in regard to it now? A. If you have anything that will refresh my memory —

Q. The trouble is I have to refresh your memory continuously. I want you to refresh my memory. Can you testify to anything about that without your memory being refreshed? A. You refresh my memory —

Q. Certainly, if I refresh your recollection, of course it becomes then a matter of proof. Mr. Rogers, frankly, can you tell me any other members of the Assembly, in 1902, and the Committee on Railroads, a list of which I have shown you, to whom you contributed? Can you? A. There are some that I have contributed to, no doubt, but I can't remember what year; that year or afterwards.

Q. Well, other years. Look at the list, that year and other years. Do you recall? A. I don't want to say there that I have or have not, Governor Bruce.

Q. Well, look at the list and give me your best recollection. A. No doubt I have.

Q. Can you give me the names of those? A. No — no doubt I have.

Q. Can you give me the name of anyone? A. If you have some evidence there, why I can help you.

Q. I show you, on May 16, 1902, a withdrawal of \$500. Do you know to whom that went? That is from your account, the 16th of May, 1902. A. I see what you have there marked in red.

Q. Well, outside of that do you have any recollection? A. No.

Q. I show you one of the check books of Ellingwood & Cunningham, under the date of May 16, 1902, when this \$500 was withdrawn, "Check A-557, J. R. Yale, account G. T. Rogers, \$500." What were the facts concerning that transaction? A. It might have been money loaned —

Q. Not what it might have been. What was it? A. It may have been the contribution that I was tardy on.

Q. Were you tardy until May 16? A. Oh, yes.

Q. There was no campaign on May 16, was there? A. No, but —

Q. Where did that \$500 come from? A. From me.

Q. Mr. Yale was a member of the Assembly at that time, was he not? A. Yes, sir.

Q. And a member of the Railroad Committee? A. Yes.

Q. Well, now, can't you give me some fact in regard to the transaction? A. Nothing more than I told you.

Q. Now, Mr. Rogers, just a moment. This excuse of political contributions should not extend through the whole year. We are getting down to May 16. A. Well, it does.

Q. Why a contribution on May 16th? A. It might have been a tardy one.

Q. Where did the money come from? A. If it was a political contribution it came from the association.

Q. Did it or did it not? I can't tell.

Q. I note on the same day in the deposit sheets of Ellingwood & Cunningham, "H. A. Robinson, Order G. T. Rogers 300, H. A. Robinson, order G. T. Rogers 200," making up the 500. Does that refresh your recollection as to where it came from? A. That is the same date?

Q. Yes, May 16, 1902. A. It must be one of those tardy contributions.

Q. Did it come from Mr. Robinson? A. It must have.

Q. A contribution from the Street Railway Association, was it? A. Yes, sir, or borrowed money. I can't tell which.

Q. Now, Mr. Bruce, which was it? A. I cannot tell you.

Q. Do you have no recollection? A. None whatever.

Q. Then why do you try to make the excuse that you have no recollection — Which was it? A. It may have been one or the other.

Q. It may have been a whole lot of things, but that doesn't aid this Committee, what it might have been. A. It may have been that.

Q. It came from Robinson to your personal account and from your personal account to Yale, did it not? A. Yes, but, Governor Bruce, I have said before that I have advanced thousands of dollars to that committee, many times, of my own money.

By Assemblyman FOLEY:

Q. What committee was that? A. I meant the association.

By Judge BRUCE:

Q. Was this contribution to Yale from the association through you or Mr. Robinson, or was it a loan? A. I can't tell you.

Chairman MERRITT: The Committee will stand adjourned until to-morrow at 10:30 A. M.

Adjourned to Thursday, September 22nd, 1910, at 10:30 A. M.

EIGHTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, September 22nd, 1910 — 10.30 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ISIDOR J. KRESSEL, Esq., *Assistant Counsel*

Chairman MERRITT: The Committee will be in order.

G. TRACY ROGERS, recalled.

Examination by Judge BRUCE:

Q. Near the close of the session yesterday, Mr. Rogers, I inquired whether or not you had not, to a very large extent, managed the account of Col. Baxter. You said at first that you thought that you had nothing to do with the account, and after my refreshing your recollection you said that you, perhaps, had at times had something to do with his account. Has your memory been refreshed in regard to that since yesterday? A. No, sir. I think, as far as the history of Col. Baxter's account is concerned; my recollection of it, I think I persuaded him to do his business with our firm, and from the letters you showed me evidently I started him,

and I think Mr. Cunningham then assisted him, and after that his son went into the firm, and he handled his own matters.

Q. If I recollect your evidence correctly you said that you did not introduce him, that his son brought him to the firm? A. Well, I am mistaken about that; that was my recollection. His son came there afterwards, I think; I have not looked it up at all.

Q. Your present recollection is that you introduced him to the firm of Ellingwood & Cunningham? A. I only think I did; that is my recollection about it.

Q. The correspondence which passed between the firm and Colonel Baxter with reference to the account speaks of the game that you are playing for him. Don't you think that indicates that you were managing his account? A. At that time, no doubt I started it.

Q. Then you were managing his account? A. Why, I may have started it.

Q. How long did you continue to manage his account? A. I can't recollect, but not long.

Q. About how long? A. I can't say.

Q. A year or two years? A. Oh, no.

Q. Three years? A. No.

Q. Well, the account opened in March, 1899. Now, how long do you think, after that time, you continued to manage his account? A. Governor, I have no recollection of it; if I had I would tell you.

Q. In the management of his account did you continuously put up margins for him? A. Oh, no.

Q. Did you at any time? A. Well, now, I say no, but you may have something there.

Q. Do you recall at this time whether you did or did not? A. I don't think I did — but if I did he repaid me.

Q. I am not asking you that, whether he repaid you? A. I don't remember.

Q. Then you haven't any present recollection whether you put up margin for him or not? A. No.

Q. Did you have any interest in the account? A. None whatever.

Q. If you had no interest in the account, why would you be advancing margin for him? A. Well, some of us do those things.

Q. Colonel Baxter was then Clerk of the Assembly, was he not? A. Yes; a friend of mine for a great many years.

Q. I call your attention to a letter of November 11th, 1899, written to you by Ellingwood & Cunningham, dictated by J. W. C. "G. T. Rogers, Binghamton, New York. Dear Sir: We are write ink you as usual for the reason that you told us to write the Colonel." The fore part of the letter refers to Colonel Baxter, I am reading only one paragraph. "A. E. B." — those are the initials of Colonel Baxter — "has only one and a half per cent: margin on 100 Southern Pacific. You might send us your personal check for \$10,000 on his account?" A. What?

Q. "You might send us your personal check for \$10,000 on his account." Do you recall receiving that letter from Ellingwood & Cunningham? A. I did not.

Q. Did you advance the margin of \$10,000? A. I have no recollection of it.

Q. Why were Ellingwood & Cunningham, of which firm you were a special partner, asking you to advance \$10,000 on the account of Col. Baxter? A. I am sure I don't know. What date was that?

Q. That was November 11th, 1899? A. He opened the account when?

Q. He opened the account in March? A. Did they get the \$10,000?

Q. That is what I would like to know? A. So would I?

Q. Did they? A. Not that I know of; if they did, I would like to know it.

Q. Then you didn't respond to their request; is that correct? A. I haven't always responded to \$10,000 requests.

Q. This was not a request from a stranger; it was a request from the firm of which you were a special partner? A. I don't think I did.

Q. What basis did they have for asking you to put up \$10,000 on this account? A. They thought, very likely, I would go after the Colonel.

Q. Well, they asked you not to send the Colonel's check, but to send your personal check for \$10,000 to his account. Who else was interested in this account besides Col. Baxter? A. No one that I know of.

Q. It appears to be a large, long trading account. Can you tell

me whether, to your knowledge, anyone else was interested in the account excepting Colonel Baxter? A. No, sir, I cannot—I don't think that anybody else was.

Q. In the evidence which has been produced before this Committee, gathered from the incomplete records of Ellingwood & Cunningham, of which firm you were a special partner, we have traced the following moneys from Robinson to your account, and through it to members of the Legislature, during the years 1900, 1901 and 1902: May 13th, 1900, \$3,000; May 22d, 1900, \$5,000; May 10th, 1900, \$500; September 13, 1901, \$1,000; November 4th, 1901, \$2,800; May 16th, 1902, \$500; July 7th, 1902, \$2,000; July 11, 1902, \$200; October 27th, 1902, \$3,000; November 3d, 1902, \$2,000—making in all \$20,000. We also find, from these incomplete records, the following checks to you from Robinson, which did not go into your account: November 14th, 1900, \$1,000; December 21st, 1900, \$500—making a total in the aggregate of \$21,500. Now, all this money went to the credit of members of the Legislature. And besides the money coming from Robinson indirectly through you to the legislators, there was also passed to the credit of legislators directly the following: April 23d, 1901, Goodsell, \$9,000; March 9, 1903, Goodsell, \$500; May 1, 1901, Bedell, \$3,500; January 23, 1903, Bedell, \$1,000—making in all \$14,000. From Vreeland there went to these legislators, or at least from his personal account, \$2,675; from Street Railway Association during one month in 1903, we find that \$25,000 was distributed through Hackley and Ellingwood & Cunningham to members of the Legislature as follows: January 26, \$2,500; July 10, \$7,500; July 22, \$5,000; July 24, \$10,000. We showed, also, by Mr. Vreeland that in 1900 the Metropolitan paid to the Street Railway Association an assessment of \$12,300.47, and that in 1901 the Metropolitan paid \$7,000. Thus, from these fragmentary records of Ellingwood & Cunningham, we have showed that between May, 1901, and July, 1903, about three years, a little over, two months, \$82,475 was passed through your hands and the firm's hands to the legislators of this State. Now, I wish to ask you, Mr. Rogers, and I want you to tell me frankly, why was this money paid? A. Now, in the first place, Governor, did all that money pass through the firm's hands?

Q. Either through yours or the firm's? A. The last two contributions you spoke of Mr. Vreeland making was not made to the Street Railway Association?

Q. Yes, and a great many others were made to the Street Railway Association and through you, to them or Ellingwood & Cunningham, which passed to the credit of members of the Legislature. Now, why were these payments made? A. May I ask you, wasn't that a duplicate, the last two?

Q. What last two — the \$12,300 and the \$7,000? A. Yes.

Q. Well, if it was a duplicate we have not found any record of it. Assuming that it was a duplicate, why was the money paid? A. May I ask you another question. Was this \$7,500 that you called my attention to that Cole remitted from Robinson, was that a duplicate also?

Q. Not a duplicate; it was money that went to the Hackley Special Account. A. From Robinson's account, wasn't it.

Q. This does not appear in the records. If they were duplicates give us the proof of that. A. Nothing, only that I am stating that the check was drawn on the Morton Trust Company, on Mr. Robinson's account. I am not trying to dodge. I handled more money than you have stated there that I have.

Q. I have no doubt of it. That is what I implied in my question, when I said that from these fragmentary records we have been able to trace \$82,000, and that, possibly, is only a drop in the bucket? A. Oh, no.

Q. But even if it is only a partial amount — a part of the amount which you handled, why was this money paid, will you tell me? A. Well, now, do you want to get at the amount of money that was raised?

Q. No. I asked you why it was paid — not the amount. We want the amounts, so far as the records show, and I will examine you in regard to the other amounts in a moment. Tell me why that money was paid. A. I cannot answer that any more than any other contribution made during those years from corporations was paid for their reasons, and I suppose we had ours.

Q. Well, what were yours? See if I cannot refresh your recollection. Mr. Vreeland testified that when he became a member of the executive committee you advised that it would be a good thing

to make these payments, and that the whole matter was left to you, the assessments were levied, the money paid to you and you distributed it. A. That's right.

Q. And made no report to them or anyone else. Now, why did you think it would be a good thing to pay the money? A. I must have been of the same opinion as everybody else, every other corporation.

Q. I am not asking what everyone else's opinion was. Now, you tell me plainly and frankly why you thought it would be a good thing. A. Well, anybody that contributed to political parties naturally had a better treatment.

Q. Better treatment from whom? A. From the Legislature.

Q. Then the contributions were made for the purpose of receiving favorable treatment from the legislators who received it, was it? A. Fair treatment.

Q. Fair treatment. A. Yes, sir.

Q. Could not a man receive fair treatment without paying money to them? A. I would not attempt to answer that.

Q. Well, you say you paid it to receive fair treatment. Could not you receive fair treatment without paying it? A. Well, that is the best answer.

Q. Was that the result of your experience, that in order to receive fair treatment you had to pay them money? A. Well, it was in my judgment the wisest thing to do.

Q. Why the wisest? Tell me frankly? A. Why, I have been trying to.

Q. Then why wise? Mr. Vreeland said you advised it to the executive committee, and that they acted on your advice? A. Oh, they did.

Q. Now why, what was the basis of the advice? A. The first two or three years that I was president, and when I went to Albany — and, by the way, not as G. T. Rogers or as a lobbyist, but as president of the association — I found something should be done, and I advised that an assessment should be made to use for political purposes, for campaign funds, and I advised that that campaign fund should be distributed, as far as possible, in endeavoring to elect the best men to Albany; men that we could expect fair and decent treatment from.'

Q. The best men for whom? For the railroads, or for the people? A. The best men for the people and the railroads, also.

Q. You said to elect men from whom you could expect and receive fair treatment. A. Yes, sir.

Q. Now, could you not expect to receive fair treatment from these men unless you contributed this money? A. Very possibly, perhaps, unnecessary. I helped to elect them, perhaps.

Q. And when you helped to elect them, then would you create an obligation, if they were elected? A. Everything that I ever contributed to those men was done without a promise or a suggestion of a promise as to anything affecting legislation I was interested in.

Q. Yes, but if you contributed money to them for the purpose of their election, and they were elected, then there would be an obligation. A. No, sir, I can't say that. Some of them never knew that I contributed to them.

Q. Who did not know? Name them. A. Oh, I could not name them.

Q. Well, let us have the names of one that did not know. Goodsell knew, didn't he? A. Oh, yes.

Q. He was a member of the Railroad Committee of the Senate. Now, just answer my question. Now, Goodsell knew, didn't he? A. Certainly.

Q. And he was a member of the Committee on Railroads in the Senate? A. Yes, sir.

Q. Bedell knew, didn't he? A. Certainly.

Q. And he was Chairman of the Committee on Railroads in the Assembly, was he not? A. Yes.

Q. And also a member of the Committee on Rules. Now, who else knew, or who did not know? A. Why, you have a number there in the records that have my name opposite the account.

Q. They all knew? A. Certainly.

Q. Well, you said there were others that did not know. Who did not know. Give us the names of those who did not know. A. Well, I would simply say to you that there were some that did not know.

Q. Well, who were they? A. Well, I cannot remember now.

Q. Can't you remember one? A. I have stated the facts.

Q. Can't you remember one? A. I have stated the facts.

Q. Well, can't you give us the name of one who did not know?

A. Well, now, Governor, I did not know —

Q. Now, Mr. Rogers, are you going to give me the name?

A. Yes.

Q. Well, that is what I am inquiring for.

Assemblyman FOLEY: Mr. Rogers, how about Colonel Baxter?

The WITNESS: He never had a dollar from me in any way shape or manner.

Q. Now, Mr. Rogers, wasn't it a fact that you took very good care that every one in whose interests you contributed knew about it? A. No, sir. I did most of them, but I did not all of them.

Q. Name some of them that you contributed for that you hid it from them, and did not allow them to know. A. I am stating the facts.

Q. What were you to get out of it if they did not know about it? A. I would have those gentlemen in the Legislature.

Q. Why did you want those particular gentlemen there? A. Because I have told you that they were good, square, honest men, who could not be bought or bribed.

Q. They were good, square, honest men and could not be bought or bribed, and you wished to put up money to keep them there in the interests of the people of the State? A. Yes, sir.

Q. Not in the interests of the railroads of the State? A. Both.

Q. Was this association a philanthropic association, operating in the public interest? A. Well, the way you put that —

Q. Now I will tell you frankly, that it never occurred to me that these corporations were taking the money out of their coffers and contributing it to the interests of the State to keep good men in the Legislature. It had suggested to my mind that they were keeping men there that they knew would give them what you term fair treatment. A. Both. I had nothing to do with a man that I supposed to be bought, and I never bought or suggested buying a vote or putting money behind a bill, either to progress it or retard it, in all my experience.

Q. You thought the better method, as I take it, then, would be to contribute money for the election of those whom you could trust, and then trust them to appreciate the obligation, was that it? A. No, to those whom I could trust.

Q. Trust in what respect? A. Trust and be fair—decent treatment.

Q. Did you have to pay money to get fair treatment up there?
A. I did not have to pay money to them.

Q. Did you have to contribute money to elect men to get fair treatment? A. Well, I have heard of contributions of a quarter of a million dollars—I don't know whether for fair treatment or what it was.

Q. That is something else. Let us talk about your transactions. What was the basis of your assessment for legislative purposes? A. I think it was one-tenth of one mill until the last year.

Q. And how much was it then? A. Two.

Q. Now, how much did one-tenth of one mill raise? A. That I can't tell.

Q. About how much? A. I can't tell. I think I raised anywhere from ten to twenty thousand dollars a year.

Q. On one-tenth of one mill? A. I don't know how much it was.

Q. Now, Mr. Rogers, you are prone to wander. Let me see if I can keep you in the straight and narrow path. How much did one-tenth of one mill raise? A. That I can't tell you.

Q. About how much? A. Well, Mr. Vreeland testified that the largest gross receipts of the Metropolitan System in any one year was \$20,000,000. One-tenth of one mill would raise \$20,000 on \$20,000,000. A. There must be some mistake in the amount, for they paid much more than that.

Q. Yes, in one year they paid, as these fragmentary records show, \$12,300 A. Yes, Governor, but this is the situation: The Metropolitan and some other roads quite frequently, and myself also, advanced money when we were short, some years. It might have been a political year or some other, and later on we raised this money and repaid those people.

Q. But there is not any evidence in your records or in the Metropolitan, that we have been able to discover, of a single dollar of repayment. A. Then it might have been assessments not collected or not levied, but paid other times.

Q. The same year they paid this twelve thousand dollars they paid seven thousand in one assessment. Now, don't you know that

an assessment of one-tenth of one mill raised about \$20,000? A. It ought to.

Q. Now, when you doubled that. A. No, no; it would not raise \$20,000.

Q. How much did it raise? A. I think you just said twenty million would raise two thousand —

Q. That would be on the Metropolitan. What did one-tenth of one mill levied on the gross receipts of all the members of this association raise in any one year? A. I can't tell you.

Q. About how much? A. I can't tell you.

Q. You handled the money — about how much? A. You have the records there.

Q. I know, but I want to know from your recollection. A. I can't give that.

Q. Was it as much as \$20,000? A. I think not.

Q. About how much? A. All the roads — we could not collect from all the roads.

Q. How much did you raise? A. I don't know.

Q. About how much did one-tenth of one mill raise? A. I don't know. You have the records, if you refresh my memory.

Q. In three years you raised \$75,000? A. Yes, sir.

Q. That was one-tenth of one mill. A. No; the last year was two-tenths.

Q. Don't you know that there was a special assessment? A. No, sir.

Q. There was not? A. Not for an assessment.

Q. Was there by the president of the association? A. No, sir.

Q. Then will you tell me how the Metropolitan in one year paid over \$12,000 and in the next year over \$7,000? A. I can't.

Q. I think you are correct. I thought that you could not tell us or no one else, except on the basis that there was a special assessment. A. No.

Q. Now, paying this vast sum of money to a very few members of the Legislature, can you now tell me what you expected to get for your money? A. Why, have not I told you this before?

Q. Fair treatment, you told me. A. I told you I expected to get fair, just treatment.

Q. Now first you told me, favorable treatment. A. Yes; that's right.

Q. Then you told me, good treatment. A. Fair treatment and just treatment.

Q. Now, you contributed a very large amount to Mr. Bedell. Was it necessary to pay those large amounts to Mr. Bedell in order to get from him fair treatment? Why did you want to retain Bedell in the Assembly? A. Because he was a fair, square man, and just.

Q. To whom? A. To everybody.

Q. To the railroads? A. To everybody.

Q. He always was to the railroads, wasn't he? A. I don't know as he was any more so for the railroads than anybody else.

Q. I did not ask you if he was more so. Was he not always, as you term it, fair and square to the railroads? A. Yes; and so to everybody.

Q. Well, he was to the railroads, was he? A. Well, if he was to the railroads, he was to us.

Q. Well, the railroads is not a personality. I thought perhaps you might refer to individuals. Was he fair and square to the railroad corporations? A. Certainly.

Q. And that is the reason why you contributed this money. Now, Mr. Rogers, why did not you contribute money to the campaign committees in the district in which Mr. Bedell was running? Why this roundabout method from the railroad companies to you, from you to Ellingwood & Cunningham, and by them placed to the credit of Mr. Bedell in his ordinary trading account, and no indication that there was ever a dollar drawn out and paid to any political party. If you wanted to retain, if you wished to retain Mr. Bedell in the Assembly for the purposes you have indicated, why did not you go and make the contribution to the political parties in the district in which he was running or the political parties? A. I left that to him to do; expected him to do it.

Q. Why did you leave it to him? A. I thought it was the best way to do.

Q. The best way or the safest way? A. Both.

Q. Both best and safest? A. Yes.

Q. Why were not all these matters laid before the executive committee at their meetings; why the secrecy? A. There was no secrecy.

Q. Mr. Vreeland has testified that they left the whole matter to you and that you never made any accounting to the executive committee. Why? A. Because I never was asked.

Q. Yes — A. One minute. May I answer that?

Q. Yes. A. I was ready every year to make a report to the executive committee.

Q. There appears in your published record each year an account, except one year, peculiarly so 1908, there appears the treasurer's report showing the disbursements of the association. Why did not these disbursements appear? A. They were a different class.

Q. In what respect? A. One was the result of the dues and the other the assessment.

Q. I know, but why did not the disbursements on account of funds raised by assessments appear in the treasurer's report? What is your answer? A. Well, it would not be best to report it that way.

Q. Why not best? A. I don't think it would be wise to report campaign expenses for both parties.

Q. Oh, you made them to both parties? A. Yes; to both parties.

Q. Just tell me what contributions you made to the Democratic party? A. Oh, I could not remember them now.

Q. You made them, did you? A. Yes, sir.

Q. In what amounts? A. Oh, I can't tell you. Different amounts. Sometimes through the State Committee, as I did to the Republicans, right to the State committees, sometimes to the committee, and sometimes to themselves.

Q. Now let us take up the contributions to the Democratic State Committee. Take, for instance, the first year you were president of the association, 1894 and 1895, what contributions did you make to the Democratic State Committee that year? A. I don't think I made any contributions to anybody.

Q. Let's take the next year. The next was 1895-1896, what contributions did you make that year? A. I don't think any money was raised.

Q. Let's take the next, 1896-97. A. That I can't tell, that we made any that year, but possibly we might.

Q. You are not positive. What is your recollection? A. No. I have no recollection when this began. I think it began, these contributions began, maybe two or three years after I was president.

Q. Take the first year of which you have any recollection. Now give us the amount of the contributions to the Democratic State Committee. A. I could not.

Q. Approximately. A. No; I could not.

Q. Was it a large or small amount? A. The first year not large — I don't know.

Q. Was it made directly or indirectly? A. I won't say — went in the rooms and made it.

Q. Went right in the rooms and made it; and to whom did you deliver it the first year? A. I have forgotten. Some one in the office.

Q. Well, you knew them all. Who was it? A. I don't remember.

Q. In cash or in check? A. Cash.

Q. Cash? A. I think so.

Q. Aren't you quite sure it was cash? A. No.

Q. Well, if it was a check, where would the record of the check or draft appear? A. That I didn't know.

Q. In any of the books you have kept or preserved? Are not you quite sure it was cash? A. I am not sure.

Q. Where were the headquarters that year? A. Hoffman House, I think.

Q. Now, don't you recall to whom you made the delivery? A. No; not that year.

Q. Well, do you recall the amount? A. No.

Q. Was it large or small? A. Nothing large.

Q. Five thousand? A. Oh, no.

Q. Not five thousand — how much? A. I could not say.

Q. \$2,500? A. Oh, I could not say as to that.

Q. Well, give us your best recollection. A. I have no recollection now of that amount.

Q. Was it a gubernatorial or presidential year? A. It was the year when the Assembly was to be elected.

Q. Which is every year. You were equally interested in the Assemblymen — A. And the Senate.

Q. Assembly and Senate. Now, did you contribute the following year to the Democratic State Committee? A. Through them. This was through them.

Q. How do you mean, through them? A. I mean this way I want to carry out the same idea, that I wanted certain men helped and I did it through them.

Q. These were not candidates on the Democratic ticket? A. Yes, sir.

Q. Who were those candidates? A. That, I can't remember now.

Q. Can't you remember any of them? A. I can't remember those things.

Q. Were they elected? A. I don't think in every instance.

Q. In some instances were they? A. That I can't tell you.

Q. Do you recall any instances when they were elected? A. No. Some of them were.

Q. With what committees — on what committees were they appointed after they were elected? A. In different committees. I think possibly some on the railroad committee.

Q. Now let me show you the list of the members of the Railroad Committee during these years, and let us see if we can locate them. A. Now, Judge, I can't.

Q. Now take the first year that you contributed for the purpose of electing or aiding certain candidates for office who were afterwards appointed on the Railroad Committee. What year do you think it was? A. Judge, I can't testify.

Q. 1899, 1900? A. I could not say.

Q. I want to help you to refresh your recollection. A. I don't want you to.

Q. I don't doubt but what that is true, but the committee would like to have me do so. A. Well, I can't remember.

Q. Were all your contributions made to the Democratic State Committee in the interests of special candidates for the Legislature? A. Yes. They were; yes, sir.

Q. I wish you would just glance through the members of the Railroad Committee in both houses in 1899, and see if you recognize any familiar name? A. Judge, I cannot remember those if I see them now; I can't remember now; it was years ago; I can't remember.

Q. Mr. Rogers, do you pretend to tell me that this association which entrusted this important item of business to you, and you

went and made a contribution of their hard-earned money to the committees in the interest of certain candidates, and these candidates were elected and appointed on the committee, the Railroad Committee, that you cannot remember them now? A. No.

Q. Mr. Rogers, just a moment. Do you mean to tell me that you cannot remember a single name now, who served on these committees in those years, to whose campaign fund you contributed through the Democratic State Committee? A. It would be difficult, because maybe they never got the money.

Q. I did not ask you that. Can you? A. It may be, Governor, none of them got the money.

Q. But can you remember a single name? A. No.

Q. You cannot? A. No; I do not think that I could remember one.

Q. Do you think that I could aid you by giving you the list of names? A. No, sir.

Q. Of the men who served on the Railroad Committee in each house? A. No, sir.

Q. Will you just look through, and when you are looking through, do not discriminate between Republicans and Democrats. If you contributed one dollar in the aid of any candidate, either Republican or Democrat, who served on these committees, do not discriminate; kindly tell me. I purpose to show you the list of the Committee on Railroads of each House for each year, and I want you to be frank with me, Mr. Rogers. It does not seem possible to me that a man of your experience in affairs could forget the names of every man that you aided. A. Most of them I could; I forget them all. It would not be any trouble to forget it. One would want to forget it.

Q. Why want to forget the philanthropic aid you gave to the people of the State in electing fair, square men; why would you want to forget it? A. Why wouldn't you want me to? Why would you want me to remember it?

Q. I should want to remember it on the ideas you have stated here, of a great public service. These railroads were in the interest of the people endeavoring to retain in the Legislature, fair, square men; why wouldn't you want to remember them; why forget it? A. Why remember it?

Q. Wasn't it a good honest purpose? A. It was.

Q. Wasn't it a good honest deed? A. It was.

Q. Then why forget it? Why want to forget it? A. Why, I wanted to.

Q. You wanted to forget it? A. I did; I have forgotten it.

Q. Purposely so? A. Well, I do not say that.

Q. I am not going to mention names, because if I did, I possibly would mention the names of many an innocent man; consequently, I am going to take the trouble of just asking you to look over them.

A. I cannot even remember back there who was on the committee.

Q. That is what I am going to help you to do. A. Don't help me.

Q. Just turn around here, please. I show you for 1899, list of the members of the Committee on Railroads in the Senate. Will you look through the list and tell me again, carefully now, if you can recall the name of a single member of the committee in whose interest the association made a contribution to either political party?

A. No; there is some on there that have already appeared.

Q. And there are others? A. I cannot remember the others.

Q. None of the others? A. I cannot remember.

Q. Not a one? A. No.

Q. Turn over to the Committee on Railroads in the Assembly. I show you the list for that year. Please examine that carefully.

A. There are names you have mentioned here.

Q. In addition to those whose names we have already mentioned? A. I cannot remember.

Q. You have not read them; don't say you can't remember. A. I know I can't, without reading them.

Q. You mean you do not intend to remember, is that it? A. No; I do not say that.

Q. Does that refresh your recollection at all? A. No.

Q. I show you the manual for the following year, 1900; look over the list of the members of the Railroad Committee in the Senate, and see if it refreshes your recollection. A. It seems to be the same committee.

Q. Look over the list of members of the Railroad Committee of the Assembly for that next year, and see if that refreshes your recollection? A. No; you have marked those there.

Q. Yes, I have marked the ones that we have already brought out. A. Yes, sir.

Q. Are there any others there, that you recall? A. I cannot recall now.

Q. I show you the manual for 1901, giving a list of the members of the Committee on Railroads in the Senate; please examine that carefully. A. That seems to be the same.

Q. Does that refresh your recollection? A. No.

Q. Look over the list of the members of the Railroad Committee in the Assembly for that year? A. I cannot remember. I cannot remember those people; it was a good many years ago; I can't remember; it is absolutely impossible for a man to remember the names. If I should say I helped some man, maybe he would come forward and say I did not.

Q. Just look through the year 1902 and see the members of the Railroad Committee in both Houses; does that refresh your recollection? A. That committee is the same as it was the year before.

Q. Does that refresh your recollection at all? A. No. Perhaps some of these people I helped and I never knew it; by funds we gave to State committees, other than direct.

Q. I am getting after these men whom you stated to the Committee you wished to aid and made contributions in their behalf? A. Yes.

Q. Just look for one more year, 1903, and see if I can aid your recollection there? A. No.

Q. Does that refresh your recollection? A. You have named them there that I helped.

Q. None other than those I have named? A. I could not swear to that.

Q. What is the largest amount you contributed to the Democratic State Committee in any one year in which you aided candidates for the Legislature? A. I cannot tell you. Those things went out of my mind as soon as the year was over.

Q. Could you give me any intimation where I could find any record of this contribution, that might be of aid to the Committee in determining what the amount was? A. Well, I do not think I could; it would be impossible.

Q. Do you think there was any record of it made at the time? A. I think not.

Q. From what source was the cash withdrawn? A. That I cannot tell you.

Q. From any bank or trust company that you could name? A. That I could not tell you, Judge. I had a number of accounts. I could not tell you. I kept all these things on a piece of paper. When the year was over, it was torn up.

Q. Why torn up and destroyed? A. Because I was through with it.

Q. Ready for the next year? A. I don't know.

Q. Now, did these contributions continue during your incumbency of the office? A. No; I stated the first two or three years, nothing of this kind was done, but it continued from that time up until I ceased to be president.

Q. And that was in what year? A. I think that was 1903 or 1904, wasn't it?

Q. Was that in 1903? A. I think the year of the election at Syracuse.

Q. October, 1903? A. I think that was the time.

Q. Mr. Cole testified here that at that time there was a new regime; the old management which he said indicated yourself and Robinson went out, and a new management came in, and a new plan was adopted; did you know anything about that? A. I did.

Q. Tell me all about it. A. When I was in Buffalo, Mr. Vreeland came there to meet Mr. Ely and myself.

Q. Who was Mr. Ely? A. W. Carl Ely was president of the International Railroad. We spent the evening together, and the future of the association was the topic. The era of reform was approaching, as we thought, and it was then decided that all political contributions should cease, and that the present members of the executive committee, and all the officers should refuse to be elected at the next convention in Syracuse, and that the smaller roads throughout the State would take their place, and that was the reason of all of us resigning — not resigning, but refusing re-election, and electing the officers that we did.

Q. Did you feel that your services and those of Robinson and Vreeland were no longer necessary, if the new plan was to go into operation? A. We felt it would be wisest for those that had been contributing, to step one side, and there was no reason in asking for contributions.

Q. If you and Mr. Vreeland and these other gentlemen who had been contributing, had formulated this plan of reform, why didn't you retain office and put it into operation? Why did you go out when the old plan went out? Had they no further use for your services? A. As what, as president?

Q. Yes. A. We decided it would be much better.

Q. Why better? A. To leave the smaller roads, and possibly there may have been other reasons—we decided it best to step down and out, all of us.

Q. It was decided then that the larger roads should make their contributions on their own plan? A. That was not discussed, and I think it was decided that the larger roads and all roads would make no contributions to either party in any respect.

Q. Mr. Vreeland testified that either in 1902 or 1903, it might have been in 1903, and that was the very year when this new light had come,—there had been a contribution of about \$42,000 by the Metropolitan to the Republican State Committee; do you recall anything about that? A. No, sir.

Q. Did you know anything about that? A. I had nothing to do with that.

Q. Did you know anything about it? A. I heard it.

Q. Did the road with which you continued to be connected after you ceased to be president of the Street Railway Association, make contributions to political campaigns? A. Not a dollar.

Q. Not one dollar? A. No, sir—oh, not a dollar. I have myself personally.

Q. Were you reimbursed by the railroad? A. No, sir.

Q. Not at all? A. Me?

Q. Yes. A. My usual contribution to the Republican party?

Q. Yes. A. No. Who would reimburse me?

Q. I inquired whether you had been or not. A. I wish I could be.

Q. Of course you know a great many of these contributions were made by you personally, whereas, in fact, they were coming from the association. I want to know whether this method was continued afterwards? A. No; if they were made by me personally, they were made by me personally, and if it was Street Railway money, that is where it came from.

Q. Did every man who received any street railroad money know at the time he received it, that it was Street Railway money? A. No, sir.

Q. He supposed it was a contribution from you personally, did he? A. I don't know.

Q. Mr. Bedell testified that he did not suppose that it was a contribution from you personally, when I asked him about your credits to his account. I asked him if he presumed that it was a contribution from Mr. Rogers, personally? He said "I did not; I presumed it came from the Railroad Company." Does your recollection agree with Mr. Bedell? A. I do not remember what he thought.

Q. Didn't you take very good care, Mr. Rogers, that in each instance, the member of the Legislature who received any aid from the Street Railway Association, knew of the fact? A. Well, I can't say that.

Q. Did your association make any contribution to any other campaign committees excepting the State Committee and the two political parties? A. State and County committees, I have told you.

Q. What County committees did you make contributions to? A. I cannot remember those.

Q. Can't you remember any of those? A. No.

Q. Do not answer me hastily; answer me after a moment's reflection, because it may become necessary to refresh your recollection. A. I wish you would.

Q. No, no, you are very willing after I make proof, to admit it as proof, but I want your recollection; to what county committees did you, during your incumbency as president of the association, make contributions? A. I cannot remember now.

Q. Can't you tell me one? A. If you can refresh my memory, I will be very glad to assist.

Q. Can you remember one? A. I haven't any idea.

Q. I am going to see if I can refresh your recollection in any way. A. All right.

Q. Do you recall whether you made any to the Albany County Committee? A. I could not.

Q. Did you? A. I could not.

Q. Could you recall whether you did or not? A. No.

Q. In any year? A. No, I don't remember; I do not remember those things.

Q. Just wait, Mr. Rogers; perhaps you remember more than you think you do? A. No, I do not.

Q. Did you make any to the Albany County Committee? A. I cannot remember at all.

Q. Did you make any to the Allegany County Committee? A. I don't remember. What year? I can't remember.

Q. You remember whether you made any to the Allegany County Committee? A. I cannot remember.

Q. You don't remember? A. No, sir.

Q. Did you make any to the Broome County Committee; that was your own county? A. Broome?

Q. Yes. A. My own?

Q. Yes. A. I always have.

Q. Not personally, I mean when you were president of the Railway Association? A. Well, I don't know whether that money—it would be hard to say whether that was my own money or Street Railway money.

Q. What years did you contribute to Broome County, all the years when you were president? A. Ever since I was old enough.

Q. How much did you contribute in any one year? A. I don't know; I have always given them a check of from two to five hundred dollars, sometimes more.

Q. How much more than five hundred dollars? A. I cannot remember.

Q. As much as a thousand? A. No, sir; maybe five hundred dollars was the most I ever gave them.

Q. Is that a mere guess, or do you have some opinion in regard to it? A. That is a guess; my contribution usually was from two to five hundred dollars.

Q. How about the Cattaraugus County Committee? A. I cannot remember.

Q. That was quite a ways west? A. Yes.

Q. Do you recall whether you sent any out there? A. No, sir.

Q. How about Cayuga? Do you recall? A. No, sir.

Q. Chautauqua? A. Only as I explained, that it was through——

Q. That was Mr. Nixon? A. Only through him.

Q. Never made any contribution except through Mr. Nixon? A. No, sir; I do not think I did.

Q. Did you ever tell Mr. Nixon that he was to turn the money over to the County Committee of Chautauqua County? A. I have always understood that every dollar I gave Mr. Nixon, outside of the moneys I have received from speculation or something of that kind, was for his county or his election.

Q. Who did you give to understand that? A. Mr. Nixon.

Q. Why was it that in the year to which I called your particular attention, he did not draw the money until up in December? A. I don't know. Maybe he used his own money. It was his own.

Q. He did not use yours? A. That is what it was given to him from me for.

Q. So that he would be returned to the Assembly? A. Yes.

Q. That was because you considered him a good man? A. I did.

Q. How about Chemung? A. I don't remember.

Q. That is down on the southern tier? A. That is near me, too.

Q. Right close by you? A. Yes, sir.

Q. What is your best recollection about Chemung County? A. I cannot recollect.

Q. Did you contribute there directly or indirectly? A. I cannot tell which way it was.

Q. Did you contribute? A. Very likely.

Q. In what years, do you think every year? A. No, sir; I did not. I contributed nothing after I had been president; I think three or four years.

Q. Was there anyone from Chemung County that you considered a good man, that you wanted to keep in the Legislature? A. I do not remember who was there; I cannot recall the names.

Q. Do you recall anyone from Chemung County that you wanted to keep in the Legislature, in the interests of the people? A. I cannot remember now.

Q. How about Chenango; that is pretty close to you, too, to Broome. A. Yes.

Q. How about Chenango? A. I can't remember now; very likely I have.

Q. You think you have? A. I cannot tell.

Q. Do you remember in what amounts? A. No.

Q. Or what year? A. No.

Q. How about Clinton, that is further up? A. I would not know anything about it.

Q. You did not contribute anything to Clinton? A. I do not think I did.

Q. Was there anyone from Clinton, that you considered a good man, that you wanted to keep in the Legislature? A. No.

Q. Do you recall anyone from Clinton that you deemed a good man who ought to be there? A. I do not recall who came from Clinton.

Q. How about Columbia? A. I don't know anything about Columbia.

Q. Do you think you contributed to Columbia? A. I cannot tell you.

Q. Was there anyone from Columbia County during those years when you were president of the association, that you deemed a good man, and whom you thought ought to be retained in the Legislature? A. I cannot tell you.

Q. You cannot remember? A. No, sir.

Q. How about Cortland? That is nearer home? A. I cannot tell.

Q. You cannot tell? A. No, sir.

Q. How about Delaware—that is my own county—didn't we have anyone up there that you thought a good man who ought to be retained in the Legislature? A. You usually did send good men?

Q. Do you remember whether you helped us at any time to keep them up there? A. You did not need much help there.

Q. Did you help a little up there, do you recall? A. I might.

Q. Not what you might; did you? A. I think very likely, I cannot remember; I cannot say whether I have or not.

Q. Not what you think; give me your present recollection, if you have any? A. No.

Q. You have no recollection? A. No.

Q. How about Dutchess; that is further up; do you recall any good man from Dutchess that ought to have been kept there? A. I cannot remember who came from Dutchess.

Q. You can't remember? No, sir.

Q. Let us go further away; how about Erie; they had a member there? A. Yes, sir.

Q. Do you remember all during these years, any good man from Erie that you thought ought to be kept in the Legislature in the interest of the people? A. No.

Q. You do not? A. No.

Q. You remember the International Railroad out there that paid a \$7,000 contribution in one year? A. Yes, sir.

Q. Or \$7,400? A. Yes, sir.

Q. Now, was any of that money to keep good men in the Legislature from Erie County? A. Very likely; it ought to have been.

Q. Do you have any recollection about it? A. No.

Q. How about Essex? A. Essex, where is Essex?

Q. Let us go back to Erie for a minute—how about Mr. Schneider? A. I don't remember.

Q. You remember that he was a member of the Railroad Committee, don't you? A. No, I heard his name here the other day.

Q. There was \$600 went through Bedell's account with Ellingwood & Cunningham to Schneider one year; do you know anything about that contribution? A. No, I don't know anything about it.

Q. Did you know the circumstances of it? A. I don't think I ever knew Schneider.

Q. He was on the Railroad Committee in the Assembly—do you recall him? A. You tell me he was there.

Q. Don't you recall whether or not he was one of the good men from Erie that ought to be kept there? A. No, I can't.

Q. In the interests of the public? A. And the railroads?

Q. Oh yes, thank you for the correction, I will add that hereafter.

Q. Do you remember anything about Essex county? A. Where is Essex?

Q. Your education, Mr. Rogers, is much more limited than I had any idea. Where is Essex County? It is up on the lake, isn't it, on the Eastern Lake? A. I don't know.

Q. Do you recall anything about Essex? A. No, sir.

Q. How about Franklin? Did they have any good men that ought to be kept there in the interests of the people and the railroads? A. I suppose they sent good men; I don't know.

Q. Do you recall whether they sent anyone that you thought ought to be retained? A. I don't know.

Q. How about Fulton and Hamilton? A. I don't know anything about them.

Q. How about Genesee? A. They always had good men.

Q. How about Greene? A. I don't know.

Q. Herkimer, Jefferson — how about Kings County, that is nearer here, a large delegation? A. Kings County, oh, they took care of themselves.

Q. Did you make any contribution to the Kings County Committee? A. I don't remember.

Q. How about Lewis? A. I don't remember.

Q. Livingston, Madison, Monroe — there is a larger county, with a larger representation? A. They didn't need any help.

Q. How about Montgomery? A. I don't remember.

Q. Nassau — how about our own county here, the county of New York; did you make any contribution here to the New York County Committee? A. I didn't know anything about them.

Q. How about Niagara? A. No.

Q. Oneida? A. No.

Q. Onondaga — there was a larger representation? A. No.

Q. Ontario, Orange, Orleans? A. I can't remember.

Q. Oswego, Otsego, Putnam, Queens? A. No, sir.

Q. Rensselaer, do you recollect any contributions there? A. No.

Q. Richmond? A. I can't remember.

Q. Rockland? A. No.

Q. St. Lawrence? A. No.

Q. Do you recall any contributions there? A. No.

Q. Schenectady? A. No.

Q. Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga — that is nearer home — Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates — do you recall any of those? A. Not at this time.

Q. Now, you stated to me that you thought you made various contributions to the different counties, and I have gone through with them so they might be in your mind, and you don't recall any. If you made those contributions, did you make them in a direct or in an indirect way? A. I can't remember whether they went through the member or direct to the chairman.

Q. What is your best recollection? A. I have no best recollection.

Q. Do you think you made the contributions direct to the candidate for office, rather than the county committee? A. Sometimes.

Q. Name some of those? A. I can't — I can't remember.

Q. Can you remember any of them? A. If you will call to my mind —

Q. Yes, Mr. Rogers, you are willing to admit the truth when I present it in absolute form, but can't you aid me a little. These records are so fragmentary, so many of them have faded away? A. I thought you had everything.

Q. Can't you aid me a little? Can't you recall any except those that I am able to present proof of? A. You have something there that may help you.

Q. Let me see if I can recall them to you — do you remember sending any contributions? A. No.

Q. Do you remember sending contributions to any member of the Assembly or Senate? A. Direct?

Q. Yes, A. No doubt I did, but I can't remember who.

Q. Can't you give me a single name? A. No.

Q. In any year? A. Well, you have a lot of them.

Q. I mean other than those that I have given? A. No.

Q. I call your attention to this letter:

“ November 1, 1900.

“ Hon. GEORGE R. MALBY,

“ Ogdensburg.

DEAR SIR:

“ Enclosed please find our check for \$500, which we send at the request of our mutual friend in Binghamton to help the Republican cause in your county.

“ Yours truly,

“ ELLINGWOOD & CUNNINGHAM.”

Do you remember that contribution? A. I never thought of it, or knew about it; I had forgotten all about it.

Q. Did you make it? A. I don't know, only what it states there.

Q. Do you recall whether or not in 1901 you sent \$500 to the Republican cause in St. Lawrence county through Mr. Malby? A. When was that sent?

Q. In 1900? A. What was the date?

Q. Does that refresh your recollection in regard to that? A. No, it does not; I am very glad to know I did it; I didn't know it.

Q. I am glad that you now recall it. A. I didn't recall it; I couldn't have sworn to that.

Q. Do you remember how it was made? A. No.

Q. In what manner? A. I don't remember anything about it.

Q. Did you send them the cash or a check? A. Naturally a check, I should think.

Q. I show you one of their check books, check "A-4238, November 1, 1900, George R. Malby, account of G. T. Rogers, cash received, exchange, \$500." You did take the cash to Ellingwood & Cunningham, didn't you? A. I am not concealing anything there; there is my name; I am not concealing anything, am I?

Q. Now, Mr. Rogers, don't begin to inquire of me. I didn't say you were concealing anything; I asked you if you didn't deposit the cash? A. That shows right there.

Q. That is the reason I am saying so — why didn't you say so? A. Yes, I am glad to know it.

Q. Now, why didn't you send the money direct; why did you send it through Ellingwood & Cunningham? A: I wanted to get a New York draft, their check.

Q. That was the reason? A. Why, certainly.

Q. That was the only reason? A. What other reason could there be? There is my name on it, and there it is in the books.

Q. You had a bank account, why didn't you send your own check? A. It made no difference.

Q. If it made no difference, why didn't you send your own check? A. If I had you would never have found it out.

Q. Oh, it was so that there would be a permanent record of it, is that it? A. Oh, no.

Q. What was the purpose, then? A. No purpose whatever, except to send it to him; that is all.

Q. Now, having refreshed your recollection to the extent that when you wanted to aid the good cause you made it open and above board; now, why did you make these other contributions concealed and under board? A. What have I done that way?

Q. These, for instance, to Bedell, where they were credited to his trading account, and by him drawn out in cash. Why didn't you make contributions to Bedell, Goodsell, and contributions to other counties, and to Nixon, in this open and above-board way? A. Why, isn't it so, in the open and above board?

Q. I show you a specific instance where you make the contribution directly, stating what it is for, and there are so many instances, such as those to Nixon and Bedell and Goodsell and the others, where you did it in this circuitous, indirect manner, why this distinction? A. I don't see where I have. Every one of these had my initials or my name behind it, and everyone I told you before —

Q. Wasn't it a circuitous way? A. It don't look like it; you have it all.

Q. Yes, after we ferreted it out, but I want to ask you if you were going to make a contribution in the interests of the public and the railroads to any cause why you didn't make it open and above board, instead of in this indirect way? Answer that question. A. I made it the easiest way.

Q. That was the easiest way — for whom? A. For both parties.

Q. And in crediting Bedell in his trading account, that was the easiest way, to credit his trading account, and then let him go and get it, rather than sending it to him direct? A. Yes, crediting to his account and let him go and get it.

Q. That is your only answer? A. That is the best answer.

Q. Have you any evidence to show that you ever knew that one dollar you placed to the credit of Bedell or Goodsell or Nixon ever went for political purposes at all? A. I have had their good word.

Q. Have you any evidence, I ask you? A. Any definite evidence?

Q. Written evidence? A. Oh, no.

Q. Nothing whatsoever? A. No, no written evidence; no.

Q. Did you ever make any contributions to the National Committee of either party? A. No, sir, I did not, any more than — I don't know whether I have or not — no, not National, State.

Q. Now, Mr. Rogers, again leading off as we commenced — why did you pay the money? A. I thought I had answered that very fully, and you have in every question repeated, for good government and for the good of the railroads.

Q. Which motive was the stronger, good government or for the good of the railroads, if there was any difference? A. As you understand —

Q. Just answer my question? A. I want to.

Q. Now, kindly go on and answer my question. I have given you opportunities to exploit your views; now let me ask you a few specific questions. Which was the stronger actuating motive in your mind, the good of the public or the good of the railroads? A. There is only one answer to that.

Q. What is that answer? A. The best interests of the railroads.

Q. Why, certainly, that is the way, to be frank about it. A. Governor, may I say something here?

Q. Yes, go on.

By Senator WAGNER:

Q. Did those interests ever conflict, Mr. Rogers? A. I said for both, but he asked me which one predominated, and I said the railroad.

Q. In your experience have the interests of the government and the interests of the railroads ever conflicted? A. Oh, yes.

By Judge BRUCE:

Q. Now, Mr. Rogers, go on, whatever you wish to say. You asked me if you could say something. A. The Senator has knocked out of my mind what it was.

Q. That is most unfortunate. A. Yes, it may be a good thing for me.

Q. Now, Mr. Rogers, in the months of June and July in 1903 — now, that was your last year? A. Yes.

Q. It appears that Mr. Cole forwarded to Ellingwood & Cunningham \$25,000 during that month. Now, we have only been able to trace \$7,500 of that. That was placed to the account of Hackley Special. Can you give us any information as to what became of the other \$17,500? A. I cannot.

Q. That is your last year? A. I can't remember.

Q. That was a pretty large amount, wasn't it? A. Yes.

Q. To pay out in June and July, when there were no campaigns on? A. My recollection would be —

Q. Have you any recollection or is this a supposition? A. I have a recollection.

Q. You first told me you couldn't tell me anything about it; and now you say you have a recollection. Give me your recollection. A. That some of the parties who had advanced the money were refunded.

Q. Now, who had advanced money? A. I had, for one.

Q. Then some of this money went to you? A. Yes, sir.

Q. How much? A. I can't tell.

Q. If it was coming to you, why didn't it come to you; why did he send it to Ellingwood & Cunningham? A. That came to me.

Q. It wasn't credited to your account — why wasn't it credited to your account in Ellingwood & Cunningham? A. Why, I got it.

Q. If Mr. Cole sends money to Ellingwood & Cunningham, a part of which is for you, in the ordinary course of business it would be credited to your account — you had an account there as special partner — why wasn't it credited to your account? A. I don't know.

Q. How much of it came to you? A. I can't tell.

Q. About how much? A. That I can't remember.

Q. Will you swear positively, Mr. Rogers, now, that one dollar of it went to you personally? A. I will.

Q. For your personal use? A. Yes, for my personal use.

Q. Then will you kindly explain to me, Mr. Rogers, in all frankness, why it wasn't credited to your account in the ordinary course of business? A. The draft came, and it was handed over to me; I was president of the association, and I refunded to these other people that had advanced the money, myself and the others, and cleaned up the deficit; we cleaned up everything, the deficit and all.

Q. Why didn't Mr. Cole, the treasurer of the association, send it to you personally, or hand it to you. Why did he send it to a brokerage house in Wall street? A. Because I asked him to.

Q. When did you ask him? A. I told him over the phone or some other way.

Q. Have you any recollection about it? A. I think I did.

Q. Is it a matter of thought or is it a matter of recollection? A. I think I phoned him to send it to Ellingwood & Cunningham.

Q. Was it to be directed to you? A. That I don't remember.

Q. You don't? A. No.

Q. Did you tell him to send it down to a young clerk down there, getting \$40 a month, a young man by the name of Hackley — did you tell him to do that over the phone? A. I did.

Q. Why? A. I don't remember why.

Q. Now; that was your last year, and that was only seven years

ago. If they owed you money, and are going to pay you, and instead of sending it to you, you tell him to send it to this brokerage house, and to a dummy clerk—now why, why? A. I can't give any reason.

Q. There is a reason; now please give it? A. He was our confidential clerk.

Q. But this was a fair, square, transaction, wasn't it? A. Certainly.

Q. Then, why didn't it go through in the ordinary course of business? A. There was no reason for doing it that way.

Q. It is such an extraordinary way of doing it that there must have been a reason. A. I can't see anything extraordinary about it. I might not be in New York for a week, or I might be there the next day—I can give no reason.

Q. What difference did it make whether you were here or not? A. If a draft came to me I couldn't get the money on it.

Q. But the draft came, and it was drawn to the order of Hackley. It wasn't simply addressed to Hackley, it was drawn to his order. Why was it drawn to his order? A. I can't tell you.

Q. He came in one morning, and there, lying on his desk, was an envelope, which he opened, and there, to his astonishment, was a check drawn on the Chemung Canal Trust Company to his order, with no letter accompanying it whatsoever, and you came in shortly afterwards—do you recall that? A. That is his evidence.

Q. Do you recall it? A. Not now. I came in shortly afterwards?

Q. Yes. And you asked him if he had received a draft—if he had received something, and he said yes. Do you recall that? A. Yes.

Q. And he took this draft out of his pocket? A. I suppose so.

Q. And you told him to deposit it to his special account? A. That I don't remember.

Q. Now, if it was your money, why wasn't it drawn to your order and deposited in your account? A. What was mine came to me. I never made a penny out of these contributions—

Q. Just wait a moment, Mr. Rogers; wait a moment. You want this Committee to believe that you are perfectly frank, do you not? A. They can make up their minds, I am doing the best I can.

Q. Can you tell this Committee why it was ——— A. No.

Q. Wait a moment, Mr. Rogers; you won't even let me ask the question. A. I know what the question is.

Q. Does it mean that you are determined that you will not answer? A. No, excuse me.

Q. Just think a moment. Your statement is that the association owed you this money? A. Some of it.

Q. That you had telephoned your order and directed them to send it to Ellingwood & Cunningham, a draft comes drawn on the Che-mung Canal Trust Company to the order of a young man by the name of Hackley, he received it, you come in and ask if he has received something, and he said he had; he showed you the draft, and you told him not to hand it to me, and I will endorse it and place it to my account, but you told him to place it to his special account. Now, this Committee wants to know why? A. I don't know why I did it.

Q. Now, you say some of this money went to you and some of it went to others who had advanced money. Who had advanced money, and for what purpose? A. For the purpose as has been presented here.

Q. That deficit, Mr. Cole, was only \$2,500, which was afterwards made up by special assessments laid upon the members, and paid, as we have shown, so this would not have been for the deficit? A. Mr. Cole, I think, is mistaken. I think the deficit he means is in the regular account. I think he used that account that year. I think the year before we used that \$3,000, or \$2,500 of it, and then replaced it.

Q. Now, tell us something about this \$10,000? A. That was for the same purpose, refunding these amounts or contributions.

Q. Now, Mr. Rogers, you will pardon me if, knowing you to be a man of affairs and a business man, I state to you that I fear that you are leaving the impression upon the Committee, in your refuge behind the words "I don't remember," "I can't tell," about transactions that are only seven years old involving \$10,000 in a lump, and involving in the aggregate away up in the thousands and thousands of dollars, you are leaving the impression that you are not entirely frank. Do you wish to correct that impression? A. I can't tell you about many transactions, fifty or a hundred thousand dollars, in

the last seven years, or the last four years or five years, and I doubt if there are many men that could that have had things pass through their hands as I have.

Q. That is all you have to say? A. Yes, sir.

Judge BRUCE: Gentlemen of the Committee, I shall have to leave it at that. That is all the witness is disposed to say.

Q. Now, I find a transaction in your account involving quite a large sum of money in connection with the name of a man I have never heard of. I don't want to spread names upon the record which may possibly relate to business transactions. I will show you the name. (Counsel shows paper to witness.) A. Oh, yes; that has nothing to do with politics whatever. He loaned me \$50,000 one time, and you will find it was paid later on.

Q. Was he ever connected with the Legislature? A. No, sir.

Q. Or with politics? A. No, sir.

Q. In any respect whatsoever? A. No, sir.

Q. Was this purely a business transaction? A. Purely so.

Q. There is nothing in the record to indicate that it was not, and I never heard of the person.

Judge BRUCE: Mr. Chairman, I presume this is agreeable. I don't want to spread upon the record names with which we are not connected?

Chairman MERRITT: Yes.

Q. Now, Mr. Rogers, do you know whether any of the steam roads of the State, through an association or directly, contributed any money to political parties or members of the Legislature? A. I know nothing whatever about that.

Q. You know nothing about that? A. No, sir.

Q. Do you know of any contribution by any of the other public service corporations, such as gas and electricity corporations? A. I paid no attention to anything but street railroads, affecting every road in the State. I know nothing about these others.

Q. At the suggestion of a member of the Committee I want to go back a minute to this business transaction about which you immediately had such a vivid and complete recollection, and ask you if you can tell me how, although this happened in 1902, you have such a clear and active memory with relation to it, and in relation to other matters involving \$10,000 and larger sums, you have no recollec-

tion at all? A. That is a personal friend of mine, and he let me have \$50,000, a friend of mine, and a neighbor of mine for life. I couldn't very well forget a thing of that kind, although many items of that kind I would forget, but that one I remember.

Q. But all these members of the Legislature were personal friends of yours, intimate acquaintances, were they not? A. A good many of them were good friends of mine.

Q. Then why can't you remember these transactions with them? A. I can't remember.

Q. I show you the name of a firm with which I am not familiar? A. They are contractors and builders of railroads, and so forth.

Q. Did you have business relations with the firm that I have shown you the name of? A. I did.

Q. What was the nature of their business? A. Contractors and building the roads.

Q. Railroads with which you were connected? A. Yes, sir.

Q. Did that firm ever make, directly or indirectly, any contributions to political parties through you or otherwise? A. Not that I know of — they are not in that business.

Q. If they were merely contractors, why were they making payments directly to you? A. Back and forth, yes.

Q. Why to you personally, this firm? A. It was a contract arrangement, and I borrowed money sometimes through them. That is a business deal, Governor, purely so. I will explain to you who they are — I don't like to bring their name in.

Q. I show you the name of another party; can you tell me whether or not that was purely a business transaction? A. That has nothing to do with this.

Q. What were the facts in relation to this transaction, the one I show you now? A. That was a real estate transaction.

Q. Purely and solely? A. Yes, sir. I think the check shows where it went to.

Q. Now I note in the records of Ellingwood & Cunningham that on October 22d, 1902 — that was the year before you went out — you were credited with \$4,063.78 cash, and on the same day Goodsell got \$5,000 and Bedell \$5,000. Can you explain that transaction? A. No, I can't — what date?

Q. On the 22d day of October, 1902. A. That is the same \$5,000, isn't it?

Q. Now, unfortunately, I am unable to refresh your recollection because the deposit book, which would have been of so much aid and value to us, is missing. Can't you, in this instance, come to my support and give me some information in regard to it? A. No, sir.

Q. None whatsoever? A. No, sir.

Q. You remember how well you recollected all these business transactions I have shown you. You knew every fact and circumstance with reference to them. Can't you tell me something about this transaction? A. No, I cannot.

Q. Senator Goodsell was a member of the Committee on Railroads in the Senate, was he not, during the time of your regime as president of this association? A. A large portion of it.

Q. Was he frequently used by you for the purpose of getting information with reference to legislation and other matters connected with the Legislature? A. I don't remember.

Q. I read you a paragraph from a letter written by you April 1st, 1904, to Mr. Cunningham, in which you say: "I hope you will see Goodsell to-morrow, and that he will have been successful in getting some information for us, and that he will do something himself, as that will encourage him in the future to work this source of information." What did that mean? A. I haven't any idea.

Q. What source of information was Goodsell working? A. That was in 1904?

Q. April 1st, 1904? A. I can't remember.

Q. What source of information was Mr. Goodsell working at that time? A. You will have to ask him; I can't tell you.

Q. What was he going to do for himself — "that he will do something for himself?" A. Very likely some stock — very likely some stock that I thought he might have had acquaintances that would know about, whether it was a good thing to buy or sell. I was not president at that time.

Q. And he was to work that source of information, was he? A. Yes, I should judge that was it. That is a guess.

Q. Have you any personal recollection? A. None whatever.

Q. Your suppositions and your "I thinks," and "I guess," are not of much value to us. A. If you haven't any information in regard to a matter tell us so

Q. Have you any in regard to this matter? A. I have none.

Q. Now, among the other accounts that you find of yours with Ellingwood & Cunningham is Rogers Special. Why did you have a special account? A. I can't tell you.

Q. Do you know of any reason why you should have a special account? A. No, I do not, only in the way of keeping ——

Q. Just look at it and see if it refreshes your recollection in any way, why you should have this special account. Do you have any recollection? A. I do not.

Q. Look over the other page of this special account. You see it was a very large account. You will note that. Does that refresh your recollection in any way? A. No, it does not.

Q. You will note there, in October, 1901, there was a transfer of \$10,000 to the Binghamton Street Railway Company. Does that refresh your recollection in any way? A. None whatever.

Q. Why that transfer? A. I can't tell you.

Q. Now, isn't it extraordinary that all these other business transactions you know all about at once? A. Which?

Q. Here is another matter, \$10,000 transferred from your special account. You can't even tell me why you had a special account when I show it to you. It does not refresh your recollection. When I point out this item you know nothing about it. A. That is my own railroad.

Q. Why this transfer? A. I can't tell you anything about it. Probably ten thousand of bonds — something of that kind. I don't know. Have you looked through this account?

Q. Yes. A. Where does it come from?

Q. I don't know. If I knew I would tell you. And the records, some of them, are gone. Now, can't you come to our aid in this item a little? A. Why, that is purely the Binghamton Railroad. It says so.

Q. Can you give us any explanation of why this special account? A. I know nothing more of it.

Q. Why this transfer? A. That might have been ——

Q. Not what it might have been. Your suppositions are of no value. If you have any recollection, tell us; if not, say so. A. Mr. Cunningham will tell you about that account.

Q. I am not examining Mr. Cunningham now. I will examine

him later. I am examining you. Have you any recollection about it? A. None whatever.

Q. From this Hackley Special account we have only been able to trace \$2,500—500 to Malby, 200 to Nixon, and two hundred. What became of the remaining 5,000? A. I can't tell you. I think we went all over this yesterday.

Q. What became of the remaining 5,000? A. I thought you went over this yesterday. I have no recollection.

Q. What became of the remaining 5,000? A. I don't know. It was checked out in the next year, wasn't it?

Q. What became of it? A. I don't know.

Q. Where did the balance go? A. I think I spent most of it myself.

Q. Now, Mr. Rogers, I have had you under examination for nearly a day, and gone over these many, many transactions. Some of them you will certainly admit are very peculiar. Examined you in regard to item after item, 500, thousands, two thousand, three, five, ten. The most, I have received no explanation from you, except where I have made the proof in front of you. Now, before leaving the stand, I want to give you another opportunity to make any explanation of any one of these items that you wish to make to this Committee. Have you any further explanation? A. I have not.

Judge BRUCE: That is all.

Chairman MERRITT: The Committee will stand adjourned until 2 o'clock.

AFTER RECESS.

2 p. m.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Cunningham.

JAMES W. CUNNINGHAM, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Cunningham? A. West End, New Jersey.

Q. And what is your business? A. Broker.

Q. With what firm are you connected? A. Simmons & Slade.

Q. And where are they located? A. Five Nassau street.

Q. How long have you been connected with them? A. About three years.

Q. Prior to that time what was your business? A. Broker.

Q. Connected with what firm or concern? A. C. H. Ellingwood & Co. for about a year; prior to that time, Ellingwood & Cunningham.

Q. The firm of C. H. Ellingwood & Co. succeeded Ellingwood & Cunningham? A. Did not succeed it, no, sir; an entirely separate and distinct firm.

Q. Of whom was that composed? A. C. H. Cunningham and H. Townsend Davis.

Q. What was your connection with that firm? A. Clerk.

Q. Prior to that time you were a member of Ellingwood & Cunningham? A. Yes, sir.

Q. When was that firm formed? A. In 1893.

Q. Prior to that business, what had your business been? A. Export.

Q. When this firm was formed in 1893 of whom did it consist? A. C. H. Ellingwood and myself.

Q. And how long did it continue in that relation? A. Until 1900, when Tracy Rogers was admitted as special.

Q. As a special partner? A. Yes, sir.

Q. And how large an interest did he have in the firm? A. \$100,000.

Q. That was put up in cash? A. Yes, sir.

Q. Had you known Mr. Rogers prior to that time? A. A few years.

Q. When did you first become acquainted with him? A. Well, I should say about three years prior to that time — 1897.

Q. Under what circumstances? A. He came in the office as a friend of one of my customers, and I was introduced by Henry R. Wilson, whose office was in the same building as ours, 41 Wall street.

Q. And did he then open a trading account with you? A. About that time; yes, sir.

Q. How long did that firm continue, consisting of Mr. Ellingwood and yourself and Mr. Rogers as special partner? A. Mr. Ellingwood retired from the firm in October, 1902. Mr. Rogers retired in January, 1905. About that time Mr. Black, F. M. Black, one of my clerks, was taken in the firm.

Q. As a special partner? A. No, general partner.

Q. How long after Mr. Rogers' retirement, in January, 1905, did the firm continue? A. Six weeks.

Q. What then happened? A. It failed.

Q. In what manner? Did you make an assignment? A. Assignment; yes, sir.

Q. Or a petition in bankruptcy? A. No, sir; made an assignment.

Q. To whom? A. To C. H. Ellingwood.

Q. Did you later file a petition in bankruptcy? A. Never.

Q. There never were any bankruptcy proceedings then? A. Yes, sir.

Q. When did they originate? A. About that time, but after a settlement which I made in about sixty days with all my creditors, the petition was withdrawn.

Q. Was it a voluntary or involuntary petition? A. Well, I had nothing to do with it.

Q. Was it filed by a creditor against the firm or by the firm in its own favor? A. By a creditor against the firm.

Q. Prior to the time of the adjudication upon the petition, you say you made a settlement with your creditors? A. Yes, sir.

Q. What became of the assets of the firm, if there were any? A. The creditors appointed a committee of four gentlemen, and they acted as a creditors' committee. Hoadley, Lauterbach & Johnson were their attorneys. They took all the assets and gave me a release.

Q. Who were the creditors' committee? A. J. B. Holmes, Jr., Austin B. Fletcher, George D. Hurd, and a Mr. Robert — I am not sure what his first name was.

Q. They took an assignment of all the assets of the firm, and in consideration of your making such assignment they released you from further obligations, is that correct? A. Yes, sir.

Q. And was that agreed to by all of the creditors of the firm?
A. Absolutely every creditor.

Q. Now some time in July you were subpoenaed, were you not, to produce before the Committee all the books and records of the firm of Ellingwood & Cunningham, were you not? A. Yes, sir.

Q. These books and records were then in a warehouse in Montclair, were they not? A. Yes, sir.

Q. And in obedience to that subpoena you permitted the representative of the Committee to examine the books and records which were in this warehouse, and at their request produced those which you see before you here, and which have been brought before the Committee? A. I did. And in addition to that, if you will allow me to state, I have the written consent of all my customers to produce those books, that is, the customers whose accounts are in question.

Q. We are not concerned with that. An obedience to the mandate of this Committee is not dependent on the will of any person, whether they had given consent or not given consent, would be no excuse for you to disobey the subpoena of the Committee. A violation of a subpoena of the Committee would place you not only in contempt, but also in violation of the Penal Code. You were later subpoenaed to produce the papers which are mentioned in the schedule which I show you, in addition to those which you had produced (showing witness paper)? A. Yes, sir.

Judge BRUCE: I wish to have that marked in evidence.

(Marked in evidence as Exhibit 31.)

Judge BRUCE: I wish to read this for the information of the Committee.

LIST OF CANCELLED CHECKS.

ELLINGWOOD & CUNNINGHAM.

Numbers 11000 to 13685, running from January 16, 1899, to March 14, 1899, drawn on the Bank of the State of New York.

Numbers from 20001 to 40000, December 21, 1899, to November 10, 1902, drawn on the Bank of the State of New York.

Numbers 40001 to 49000, running from November 10, 1902, to November 30, 1903, drawn on the Hanover National Bank.

Numbers from 52998 to 59000, running from July 25, 1904, to February 14, 1905, drawn on the Hanover National Bank.

Numbers from 6974 to 10000, running from January 22, 1902, to April 13, 1903, drawn on the Bank of the State of New York.

Also list of missing letter-press copy books from July 20, 1897, to April 29, 1898; from August 22, 1898, to January 30, 1899; May 1, 1899, to June 22, 1899; August 18, 1899, to October 7, 1899; November 23, 1899, to January 13, 1900; June 27, 1901, to August 15, 1901; December 18, 1901, to April 8, 1902; April 26, 1902, to July 19, 1902; October 2, 1902, to December 8, 1903; March 29, 1904, to October 8, 1904.

Also blotters from February 9, 1900, to September 12, 1900, and from June 11, 1901, to December 11, 1901.

Also deposit books showing checks and moneys deposited by the firm of Ellingwood & Cunningham, beginning with deposits April 22, 1902, and ending with February 15, 1905.

Stubs of checks drawn on the Bank of the State of New York, numbers 21001 to 22000, covering the period, February 6, 1900, to March 28, 1900.

Stubs of checks drawn on the Bank of the State of New York, numbers 32001 to 33000, and covering period commencing October 16, 1901, and ending with December 13, 1901.

Q. Have you produced these books, Mr. Cunningham? A. I have not, Judge.

Q. Why not? A. I am unable to find them, up to the present.

Q. It was the custom of the firm of Ellingwood & Cunningham to preserve every record which was made in the transaction of their business, was it not? A. Those were my orders; Yes, sir.

Q. Well, it was not only your orders, but it was carried out, was it not? A. Yes, sir.

Q. Even to preserving the small slips upon which the memoranda of transactions upon the Exchange were first entered, was not that true? A. Yes, sir.

Q. And that from that small slip down to the last ledger, every written instrument in connection with the firm was carefully preserved; was that not true? A. Yes, sir.

Q. Can you tell me where these missing records are? A. I cannot, sir.

Q. It is a most extraordinary fact to us, Mr. Cunningham, that notwithstanding this exceptional method of your firm in the preservation of its records, that these records, which are vital to the facts which have been developed in this proceeding, are missing; and can you give this Committee, in view of my statement, any information by which it may be able to discover these missing vital records? A. Very easily.

Q. Will you tell me? A. Up to the day we failed, I do not believe there was a paper missing, or a book missing of any kind, and as soon as Hoadley, Lauterbach & Johnson and the creditors' committee took charge, they sent up some half a dozen clerks to cart our books down to their office. Another thing, during the time these books were under subpoena, we attempted to find these particular books that the judge wanted. We asked Hoadley, Lauterbach & Johnson if the books were there, and they said they did not have them. We went there personally and found five blotters which we afterwards delivered to Judge Bruce. There were several other books which were not material. That shows one place where books were that were missing. There were other books found in Edward & Bryan's office, my attorneys, in other suits we had, and I believe Mr. Kresel found some further books there, which did not happen to be material. Those two places show how some books have been lost. There was a referee, I think his name was Mr. Norton; I gave Judge Bruce a letter to him, to see if he could find any books where practically all our books were at the time, but they failed — I don't know whether he found any books or not; I presume not, because he has not told me. Our books, particularly after the failure, were moved, part of them, to the Produce Exchange vaults, where they remained for some time, and were overhauled there, looking for certain records in suits. This was over five years ago. Those books were, part of them, moved to C. H. Ellingwood & Company's office, which was some seven months after my failure, where I had to refer to them in certain cases that Hoadley, Lauterbach & Johnson were conducting, trying to bring suits against people who owed us money. Then after C. H. Ellingwood & Co., retired from business, I went with Simmons & Slade, and I boxed up all of the remaining books and sent them

out to this warehouse in Montclair, rather to the barn in Montclair, rather to the barn in Montclair, where Mr. Hotchkiss put detectives on and watched them; and we thought someone was trying to steal the books, and then I had them put in the public store. With all this moving, it is quite possible some of the books have been mislaid; certainly they must have been mislaid in that way, because they could not have been lost in any other way. That is the only explanation.

Q. We have been unable to find any of these books in the places you have intimated, although we have made very diligent search. It seems quite extraordinary that 40,685 checks, ten letter books, two blotters, two check books and the deposit book which unfortunately covered the very periods in which we are interested, are missing, while all the others seem to be here? A. Does the deposit book cover the very period missing? It seems to me I have seen innumerable instances where you have shown references to it. Everything is not lost by any means. There are possibly five books lost.

Q. Do you recall testifying before Superintendent Hotchkiss as follows: "For a time we kept what we called a deposit book, not a bank deposit book, but a record of our deposits, and during that period, the latter part of our business, we kept practically a complete copy of the check. That book would show whether it was an insurance check, or whose check it was and what bank it was drawn on." Do you recall testifying to that? A. I do.

Q. Do you recall that this deposit book commenced in April, 1902? A. I recall that now by having my memory refreshed on the point.

Q. From that time, we have no record of your deposits. Now, if you have listened to the evidence here for several days, as I have no doubt you have, have you not? A. Very carefully.

Q. You have noted how extremely important it would have been for us if we had had the deposit book after April, 1902, which would have shown the sources from which the moneys came in which we were interested, which were deposited with your firm; isn't that true? A. That is true, but isn't it a matter of fact that there are only about four or five items?

Q. There are a great many more than four or five items, as I shall call your attention to as we go along. A. I shall be very glad to help you if I can.

Q. There are these check books, two blotters, the forty thousand odd checks, and the ten letter books; what is extraordinary to us, Mr. Cunningham, and which we would like to have any explanation you have concerning, is that these particular books are missing, whereas all this great mass of records are carefully preserved. Do you know anyone who would have any interest in abstracting or eliminating these particular records? A. No, sir; and as a precaution against that, as I have just testified, when I saw two strange men looking around the barn in Montclair, who afterwards turned out to be Mr. Hotchkiss' detectives, I went to the expense of having them locked up in the warehouse so they would not be stolen.

Q. Was that for the purpose of carefully preserving them? A. Yes, sir.

Q. Or was it for the purpose of relieving you from the annoyance of having them watched in the barn? A. No, sir.

Q. Which was it? A. Carefully preserving them, because I had been subpoenaed at that time to take care of those books, and I was going to do it.

Q. Didn't you state to me the reason you had them removed was because it was an annoyance to your mother, who lived in the residence connected with the barn, to have these men hanging around and watching out, and representatives of the press coming there and making photographs of the barn, and so forth? A. I stated to you, Judge Bruce, that when Mr. Hotchkiss wrote his word and told me that he would not reveal the location of those books, that I explained to him I did not want to have my mother annoyed; and when I found these mysterious men hanging around there, that is the time I removed them, to relieve her of further annoyance.

Q. Then it was for the purpose of relieving the annoyance and not for the purpose, primarily, of carefully preserving them?

A. Just as much one as the other, although primarily my mother's comfort.

Q. Now, if we had this deposit book we would be able to discover the source of these two payments among many others, on

October 22nd, 1902, to Mr. Bedell and Mr. Goodsell, each getting \$5,000. Now, if we had the deposit book we could tell the source from which the money came? A. Yes, sir.

Q. Could you give us any information in regard to that? A. I have not the slightest recollection of it; no, sir.

Q. And there are a great many other deposits of the same character? A. You know I told you, or possibly Mr. Kresel, I am not sure which, if I could have a list sometime of any of the items you were interested in in this missing deposit book I would endeavor to look it up and find out; I haven't received it as yet.

Q. How were you going to look it up if the books and records were missing; did you have access to the books? A. No, sir, but if you had allowed me to look it up.

Q. We could look through these books, we are quite competent to do that? A. Yes, sir.

Q. How could you aid us if the records were in missing books? A. There are a whole lot of ramifications in every single account, and it would have been hard work, and I don't know that I could have helped you. I would if I could.

Q. Did you know of the legislative accounts and moneys passing through the firm of Ellingwood & Cunningham to the credit of certain members of the Legislature? A. I knew of all the accounts; I did not know whether they were legislative accounts or not.

Q. Did you know of the credits which were made from time to time in the books of Ellingwood & Cunningham, to men who were members of the Legislature? A. Only as they occurred in regular course of business.

Q. Were you well acquainted with Mr. Rogers? A. Yes, sir.

Q. And well acquainted with Mr. Rogers' business? A. As far as it concerned us only.

Q. Did you know anything in regard to his business as president of the Street Railway Association? A. Absolutely nothing except as I mentioned here, never had anything to do with it in any way, shape or manner.

Q. You knew of the existence of the association? A. Yes, sir.

Q. You knew of Rogers' connection with it? A. I knew he was president of it.

Q. And you knew that moneys were sent from the association to your firm and credited to men who were members of the Legislature? A. Only as the transactions appear on the books; I knew of those at the time, undoubtedly.

Q. In your examination before Mr. Hotchkiss, do you remember testifying as follows: Mr. Hotchkiss had had some difficulty in locating Mr. Rogers, and he was examining you in reference to it, and afterwards, after asking you for a description of him, which you gave, his physical appearance, he said: "Q. You knew him for some time prior to his going into the firm, did you? A. A short time. Q. Were you ever in Albany with him? A. I think I was in Albany once; once at the time he was there, but not with him. Q. Did you know he had something to do with legislation up there? A. I knew nothing about it. Q. Never heard of it? A. No. Q. Did you know that he was the Albany representative of the Street Railway Association? A. I knew he was president of the association; never knew what his duties were." He then proceeded to read you certain extracts from the evidence given by Mr. Lemuel E. Quigg, before the Public Service Commission, in which Mr. Quigg testified — I will not take time to read that, as representing the Interborough-Metropolitan Company, and the Brooklyn Rapid Transit Company, he frequently went to Albany to consult with Mr. Rogers in reference to impending legislation, and consulted only with him. After reading this to you the superintendent continued: "Q. Now, with that in the record, can you tell me anything about Mr. Rogers, other than your description of him as a gentleman about five foot seven inches," and so on. "A. I never had anything to do with any of his business outside of my firm, and know nothing about it?" A. I did

Q. Is that true? A. Practically.

Q. Was it practically true, or was it true? A. It was true.

Q. And it is true now, isn't it? A. Yes, sir.

Q. Now, on the tenth day of July, 1903, Mr. W. W. Cole, treasurer of the Street Railway Association — do you know him? A. I never saw him until I saw him here.

Q. — sent \$7,500 to your firm — did you know about that at the time? A. I did.

Q. That was a part of Mr. Rogers' business outside of your firm, was it not? A. I knew it as a deposit he made there.

Q. Had you anything to do with the receipt of the \$7,500? A. Absolutely nothing, except as receiving it as broker when it was sent in.

Q. Do you remember writing Rogers about it? A. I may have written him; I do not recall it.

Q. Did you know what the deposit was for? A. He told me it was some funds he wanted to keep away from his personal speculative account, and he wanted to keep it in some other way, and it was decided to put it in Mr. Hackley's name.

Q. Who made the decision? A. Either Mr. Rogers or myself, I don't know; possibly Mr. Hackley.

Q. Why put it in Mr. Hackley's special account? A. Just as I told you. Mr. Rogers did not want it in his personal account. Mr. Hackley had been our confidential man for years. He was there all the time. Mr. Rogers was there very seldom; and as for Mr. Hackley testifying that he did not know about it, that he did not know about the account, he is evidently in error, because he drew a check against the account; that is shown in the evidence.

Q. Why did he not wish to place it in his personal account when the moneys belonged to him? A. I could not tell you.

Q. Did he state? A. I can understand a man having —

Q. Now, don't give me your supposition, Mr. Cunningham; let us just get along now on the facts. Did he state why he did not wish to put it in his personal account? A. Except he said he did not wish to put it in his personal account.

Q. Did he state why? A. Not that I recollect now.

Q. Any explanation at all? A. No.

Q. Did he state why he did not want to put it in the account and call it Rogers' Special instead of Hackley Special? A. There was already a Rogers Special account.

Q. Why didn't he put it Rogers Special B? A. I could not tell.

Q. Why was Hackley selected? A. Because he was our confidential man.

Q. Did you talk to Rogers about it? A. I presume so.

Q. What did he say? A. I cannot recall.

Q. Did you talk with Mr. Hackley about it; have you heard Mr. Hackley — A. Yes.

Q. You heard Hackley testify he never knew anything about it? A. Hackley could not tell an untruth to save his life.

Q. That was my impression also. A. Yes, sir.

Q. You say you remember having a conversation with Mr. Hackley about it? A. I say I may have; I do not recall.

Q. Do you recall whether you did or not? A. No, I do not recall.

Q. Then you have no present recollection? A. No, sir, not positively.

Q. Didn't you think it quite extraordinary that you did not tell Mr. Hackley you had placed to the credit of his special account \$7,500? A. I think he undoubtedly knew it, I said. I do not think I did not tell him.

Q. Have you any present recollection of it? A. No, sir, no present recollection.

Q. Mr. Hackley, under the solemnity of an oath, sitting in that chair, testified he did not have any knowledge in regard to it. In the face of that, would you testify that you did speak to him about it? A. I would, and I testify that he must have been in error.

Q. Although you have no present recollection of it? A. No, sir.

Q. You don't know when you did talk with him? A. No, sir.

Q. When did you talk with him? A. Undoubtedly at the time in the office.

Q. You have no present recollection, of course? A. I do not remember it. No one could remember it. That was one detail in a million.

Q. But you are sure you did talk with him—— A. The books simply show the decision.

Q. If you did have a conversation with him, have you any present recollection of what you said to him? A. I do not recall any conversation.

Q. And yet the \$7,500 was placed to his credit? A. Certainly; and he knew it.

Q. And Rogers did not explain why? A. I don't know, except

he told me, as I told you, he wanted to keep it separate from his other business.

Q. Did he at the time explain to you why? A. He said he wanted ——

Q. Did he explain to you why? A. That is his explanation.

Q. Did he say why? A. He did not say why, not that I remember

Q. Do you remember whether Rogers was there the day it was received? A. I have no recollection.

Q. Do you remember who actually received the \$7,500? A. I do not.

Q. Was it on the day of its receipt that Rogers told you he wanted it put in the special account? A. I don't remember.

Q. Did he tell you beforehand that he expected it and that when it came he wanted it put in the special account? A. I think not, I am pretty sure not.

Q. Or did you first receive it and then hold it for a while and later put it in the special account? A. I think not.

Q. You think it was placed in the special account on the day of its receipt? A. I think so.

Q. I show you copy of a letter dated July 13, 1903:

"MR. GEORGE TRACY ROGERS,
Binghamton, N. Y.

DEAR SIR."

I read the second paragraph. "We received check for \$7,500 to-day from W. W. Cole, which we have placed to the credit of special account. Yours truly." Did you send that letter? A. Yes, sir.

Q. Does that refresh your recollection in regard to when you had this conversation with Rogers, if you had any conversation? A. No, sir, not beyond that fact.

Q. Had you had any correspondence with Mr. Cole in regard to this? A. We possibly might have made a formal acknowledgment, I don't recollect.

Q. Do you have any present recollection of whether you did make a formal acknowledgment or not? A. No, sir.

Q. Do you have any present recollection? A. No, sir.

Q. I show you copy of a letter marked "personal."

"July 13, 1903.

MR. W. W. COLE,

Elmira Water, Light & R. R. Co.

DEAR SIR:—

Your favor of the 10th inst. received enclosing check on Morton Trust Company for \$7,500, which we have passed to the credit of the Street Railway Association of the State of New York. With thanks we are,

Yours truly,

ELLINGWOOD & CUNNINGHAM.

Dictated, J. W. C."

Did you send that? A. Yes, sir.

Q. Why was it marked personal? A. To distinguish his personal business from the Elmira Water, Light & Railway Company, otherwise that letter might have been opened by some one else in the office.

Q. Why did you pass it to the credit of the Street Railway Association of the State of New York? A. I can't tell you now.

Q. Did you pass it to the credit of the Street Railway Association? A. Apparently not.

Q. Then why did you at the time state you had? A. It is evident from the letter that you read before that we must have received some letter from Mr. Rogers to put it in the special account.

Q. Oh, well, if that is true then why did you write on the same day to Mr. Cole stating that you had passed it to the credit of the Street Railway Association of the State of New York? Why didn't you state the fact that you had passed it to the credit of Hackley Special at the request of Mr. Rogers? A. Mr. Cole's letter was undoubtedly dictated first and, in the meantime, we heard from Mr. Rogers.

Q. That is a mere supposition, isn't it — they are both written on the same day? A. The facts speak for themselves.

Q. Wasn't it for the purpose of making a record which would ap-

pear in the records of the Street Railroad Association that it had been passed to their credit? A. Not at all.

Q. Did your firm then have an account with the Street Railway Association of the State of New York? A. I don't recall.

Q. Did it ever have? A. I think so, and yet I am not sure about that, the ledger would show.

Q. Well, it must have passed if you stated that you passed this to the credit of the Street Railway Association, must it not? A. Not necessarily. Mr. Cole's letter might have said "We enclose \$7,500 which passed to the credit of the Street Railway Association."

Q. But, unfortunately, that letter is lost — if we only had those missing letter files? A. I don't know why his letter should be lost, if there was a letter. All our letter files are complete.

Q. No, unfortunately, they are not all here, and apparently only — well, I would say apparently a very large part of them are lost and not here? A. All of Cole's letters?

Q. A great deal of your correspondence, the correspondence of the firm? A. I don't understand it.

Q. Now, on June 26, 1903, Mr. Cole sent \$2,500, do you recall that? A. No, sir; except as I have heard it in the testimony given here.

Q. What were the facts in regard to it? A. I don't recall except the testimony I have heard here.

Q. You will recall on the 13th of July the receipt of the \$7,500 which I have just shown you? A. Yes, sir.

Q. A few days previous, on June 26th, he sent \$2,500. Do you recall the circumstances of that? A. No, sir.

Q. I show you copy of a letter dated June 26, 1903: "Mr. W. W. Cole, Treasurer, Street Railway Association, Elmira, New York. Dear Sir: Yours of the 25th inst. received enclosing check for \$2,500, of which we will advise Mr. Rogers as soon as he returns to town. Yours truly, Ellingwood & Cunningham." Did you make this acknowledgment? A. Yes, sir.

Q. Why do you address him on this occasion as treasurer of the Street Railway Association, and later when you acknowledge the receipt of the \$7,500, you address him with reference to his connection with the Elmira Street Railroad and mark it personal?

A. I explained why that was marked personal. This was not marked personal because it is addressed to him as treasurer of the association from which the funds came.

Q. Why didn't you address the other to him as treasurer of the Street Railway Association? A. I can't tell you unless the correspondence came in on a letter-head of that kind.

Q. If the correspondence came in on a letter-head of that kind, and the funds came from the treasurer of the Street Railway Association, why didn't you make the acknowledgment to him as treasurer of the Street Railway Association? A. I can't tell you.

Q. Is that the only explanation you have with regard to these two transactions? A. Yes, sir. I want to explain to you in regard to the possible loss of his letter, if the letter is lost. Mr. Rogers' desk was in a room next to mine for a great many years, and it was my custom on correspondence that came in from him to me, for instance, after I read it I would put it on his desk to see if there was anything to discuss with him afterwards, and I presume if any correspondence from him or from Mr. Cole is lost that is where it has been lost.

Q. It is his fault? A. It went on his desk.

Q. It is his fault if it is lost? A. I would just as soon say it was his fault.

Q. That would be a slight additional burden put upon him in addition to those already laid on him by every witness --- putting it up to Rogers? A. That was the practice for years.

Q. Did you know what this \$2,500 on June 26th was for? A. No, sir, not that I recall now.

Q. Do you know what became of the \$2,500? A. No, sir, only from what I heard testified here.

Q. What did you hear testified to here? A. I think that was the one where there was the \$500 credit, \$1,000 to the bank for him, and the other \$1,000 cash retained — isn't that the item?

Q. Was that your recollection of the matter at the time? A. I recall nothing about it.

Q. Do you know to whose account it was credited? A. No, sir.

Q. Was it credited to the account of Mr. Rogers? A. I can't tell you.

Q. Wouldn't it naturally be credited to the account of Rogers? A. It would unless there were instructions to the contrary.

Q. Well now, on the 24th of July you remember the receipt of \$2,500, on June 26th the receipt of \$2,500, and the receipt of \$7,500 on July 13th. Now, on the 24th of July, 1903, there was \$10,000 received. Do you recall that circumstance? A. No, sir.

Q. Did you have any communications with Mr. Cole in regard to the receipt of \$10,000? A. Not that I recall, unless this is the one referred to where the draft was set back for New York funds.

Q. Do you have any present recollection of the transaction? A. No present recollection, no, sir.

Q. None whatever? A. No, sir.

Q. I show you a copy of a letter appearing in your letter book: "July 27, 1903. W. W. Cole, Elmira, New York." In this instance you note he is not addressed in any capacity. "Dear Sir: Yours of the 24th inst. received enclosing draft for \$10,000 for which please accept thanks. Your letter did not arrive until this morning, having been registered on the 25th, which explains the delay in arriving here. Yours very truly, A. S. Hackley." Did you make that acknowledgment? A. No, sir.

Q. Whose writing is that? A. I don't know, I don't think I ever saw it before.

Q. Do you recall Mr. Hackley testifying that it was not his? A. Yes sir, and it is not his.

Q. Did you have any knowledge in regard to the transaction? A. Not that I recall now, unless as I told you it was the one in which the question of the New York fund came up.

Q. Tell me all you know about the one in which the question of the New York funds came up? A. I only know what has been testified here recently, and that is that it was some out of loan funds, and it was our custom when anybody sent us money that we wanted it in New York funds, and we would send it back.

Q. Did that evidence refresh your recollection in any way in regard to this \$10,000? A. Not at all.

Q. Now just reflect for a minute and tell me, Mr. Cunningham, if you can recall in any way even the most minute fact in regard to this transaction of the \$10,000? A. I didn't know of the \$10,000, that is to recall anything about it, until I heard it testified here the other day.

Q. Have you ever heard of it? A. I might have heard of it but I didn't remember it.

Q. Where did it go? A. I don't know. I presume the check was endorsed and turned over to Mr. Rogers, although I asked Mr. Kresel the other day if he would not try to get that original voucher from a certain source, and that would give us some light.

Q. Yes, but a very close examination of Mr. Rogers' account and Mr. Hackley's account does not reveal where it went to. A. That rather bears out quite the possibility that the draft was immediately turned over to Mr. Rogers, and that was what I had in mind when I asked Mr. Kresel if he would not get the original voucher.

Q. You recall Mr. Hackley's testimony on that point, do you not? He testified that he came in one morning and found unexpectedly on his desk an envelope in which there was a draft for \$10,000 drawn on the Chemung Canal Trust Company of Elmira, that no letter accompanied it, that he had never heard of this Elmira Trust Company, knew nothing about the purpose for which this draft was sent to him, it being drawn to his order, that he put it in his pocket, that shortly afterwards Mr. Rogers came in and asked if he had received something and he said he had, and showed it to him, and he told me to endorse it over to the special account. Do you recall that? A. I recall the testimony.

Q. Did you have any knowledge in regard to that transaction? A. I did not.

Q. Was there such an account as Hackley Special with a \$10,000 deposit, on your book? A. Not to my knowledge. The books will show it if it was there.

Q. It does not appear from our examination of the books. A. Our ledgers are complete. By the way, I would like to make a correction. You spoke of fragmentary records. There are none of our records gone. Some of the books are, the deposit book, for instance, and the check book, but the accounts are all intact, absolutely every account and they are in your possession.

Q. The accounts are intact, but most unfortunately the sources from which the money came is the very thing this Committee wants to know, and most of them are gone. A. There are every one there except since the date of this deposit book.

Q. Since April, 1902. A. That is correct.

Q. But since that time the deposit book is gone, and prior to that time and including that time nearly 40,000, over 40,000 vouchers are gone. A. In regard to these vouchers I want to explain that I have inquired of several of our old clerks and boys who were with us from time to time when we were moving from one place to another, what they knew about the packing of these vouchers, and they all remember innumerable big porter's bags, such as the janitors use for waste paper, containing advertisements and circulars and things of that kind which had not been matters of record, that had accumulated, and in one case in particular, when we moved from 43 Exchange place they said there were eight or ten bags. There is a bare possibility that these vouchers might have been put in those bags, but none of them have any definite knowledge of it.

Q. Did these men tell you that there were vouchers there that were lost? A. No, I just state that as a possibility. That is the only way I can explain it. As for the vouchers being gone, it doesn't make a particle of difference excepting the two check books. We have a record of every check we have ever drawn.

Q. It is unfortunate that the ones that are lost are the very ones we would like to have? A. Yes, sir, in one or two cases.

Q. No, in a great many cases. Have you anything further to say on that? A. No, sir.

Q. Have you any further explanation in regard to the loss of those books? A. No, sir, nothing further, except that I hope to find them some day.

Q. Have you any other suppositions or presumptions in regard to it, if so, you may spread it on the record. A. Nothing, only that I looked yesterday and tried to find some.

Q. You have nothing else to say about it? A. No, sir.

Q. Unfortunately that does not supply the deficiency — they are still gone. Now, this \$10,000 which Mr. Hackley found so unexpectedly on his desk, and of which no records appear in the books, didn't that go into your private account? A. No, sir, not that I know of.

Q. You would have known it if it had? A. I think so at the time certainly.

Q. If it went into your private account that would be a matter of personal knowledge, wouldn't it? A. Yes, sir.

Q. Now, the only bank accounts the firm had in 1903 were with the Hanover National and the Bank of the State of New York — isn't that correct? A. The Bank of North America, wasn't it at that time, and the Hanover?

Q. Well, those were the only two bank accounts, were they not? A. Yes, sir.

Q. Where did you keep your private account in July, 1903? A. I don't know now.

Q. Can't you tell me — that is only seven years ago. Where did you keep your private account? A. I kept my private account in the Bank of Commerce at one time. I don't remember whether it was at that time. That was my largest personal account. I don't remember that particular year, but most of my private business was done by deposits with the firm.

Q. Did you have an account with the Bank of North America, a personal account? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. In 1903? A. I don't remember that year, but I did have a personal account there.

Q. Didn't you deposit this \$10,000 check in your private account with the Bank of North America? A. I have absolutely no recollection of it.

Q. Well now, this was a rather large item, was it not? A. Not for me, in those days.

Q. It was not? A. No, sir.

Q. Well, a little trifle like that deposited in your special account, do you think that that would have impressed your recollection? A. It might, and might not specially.

Q. From the fact that Hackley discovered it so unexpectedly on his desk, would that make the circumstance lodge in your memory? A. It would not, because I never heard of the discovery until some time afterwards.

Q. Now if it should appear that you did deposit this identical draft in your private account and that afterwards you withdrew it in cash from your private account, and that the cash went into the hands of men who were members of the Legislature, would

that lodge it in your memory? A. It certainly would. And I state positively that that never happened, as I never gave a dollar to anybody.

Q. Now for the purpose of refreshing your recollection, examine this book and tell me what book that is. What book is it? A. My personal check book.

Q. On what bank? A. North America.

Q. Bank of North America. Now let me call your attention to the deposit under the date of July 27, 1902, Elmira Trust Company, Elmira, New York, order A. S. Hackley, \$10,000. Does that refresh your recollection as to whether or not you deposited the \$10,000 in your personal account? A. It refreshes my recollection, and it is a fact, that I did not do it. This is not in my writing.

Q. Well, it was deposited then? A. Yes, sir.

Q. In your private account. Whose writing is it? A. Jesse Barr.

Q. Who was Jesse Barr? A. He was my secretary at that time.

Q. And he was in the habit, was he not, of making deposits for you? A. Yes, sir.

Q. Now why was that deposited in your personal account? A. I could not possibly tell you.

Q. Well, would not that seem to indicate that you knew something of Rogers' business than this connection with the firm of Ellingwood & Cunningham as special partner? A. Not at all. If a man gave me a check to cash, I would cash it.

Q. Now what did you do with the ten thousand? A. I could not tell you. That check book might tell you. That is all I was going to look for.

Q. That is what I wanted to find first, what your recollection was. Have you any recollection concerning what you did with the \$10,000? A. Absolutely nothing.

Q. You had no recollection of this being deposited. Now, having aided your recollection, can you tell me what was done with it? A. I have not the slightest knowledge of what was done with it.

Q. Did not you — now answer after some reflection — did not you the day after this money was deposited in your private account

draw from that account a check for \$5,000 cash, and was not that \$5,000 delivered to Mr. Goodsell? A. I could not tell you to save my life.

Q. Well, would not a transaction of that character be lodged in your memory? A. Not at all.

Q. It would not? A. In a matter of routine, I had absolutely no personal interest in that thing. I would not recall it five seconds.

Q. Now you recall that this deposit was made on the 27th of July. I show you a copy of a letter written to Mr. Goodsell July 23, 1903. "Hon. Louis E. Goodsell, Highland Falls, New York. Call at our office any time after July 25 and we will have five thousand to deliver to you. Very truly. Ellingwood & Cunningham." Have you any knowledge of that letter? A. Not at all.

Q. Did you have any business transactions with Mr. Goodsell? A. Not that I recall, except as his stock account shows.

Q. Did you have any occasion to write him that if he would come down there would be \$5,000 waiting for him? A. Not that I recall now, except, that certainly looks like it, but I don't recall anything about it.

Q. I show you the letter press copy of the letter which I read to you. Is that your signature, "Ellingwood & Cunningham?" A. No, sir.

Q. Whose is it? A. One of the boys — I don't recall at all.

Q. You notice on the other side it says, "A. S. H.," which would be the initials of Mr. Hackley — Alexander S. Hackley. Hackley said he did not dictate the letter, sign it or send it. A. That may be so.

Q. Can you give us any information as to who did? A. No, sir, and I don't recall that writing, even.

Q. You don't? A. No, sir. There has been a great many changes, and I don't recall that at all.

Q. Well now, having in connection with the fact that the \$10,000 draft received by Hackley so unexpectedly went into your private account, your personal account, and that on the next day \$5,000 was drawn out, and on a few days previous a letter had gone from your firm to Senator Goodsell, to wit, on July 23, 1903, telling him if he would call any time after the 25th there would be \$5,000,

does that refresh your recollection as to whether or not \$5,000 was withdrawn in cash and delivered to Goodsell? A. It does not. Does not any check book show to whom the \$5,000 —

Q. Well now, as your memory seems to be so deficient, I must insist on asking the question. A. My memory is pretty good, Judge.

Q. Do you think your memory is very good when you have absolutely no recollection whatever in regard to such an extraordinary transaction? A. That \$10,000 might have been deposited there and I not know it.

Q. Now, I call your attention again to your personal check book, stub 189, New York, July 28, 1903, this deposit having been made the day before, cash, \$5,000. Can you give me any information in regard to that? A. No, sir.

Q. What was it withdrawn for? A. I don't know.

Q. Will you examine carefully and see the letter G down on the second line. Does that refresh your recollection? No, up here, does that refresh your recollection (indicating)? A. No, sir.

Q. Mr. Goodsell's name begins with G? A. Yes. That is not my writing. I don't know.

Q. Whose writing is it? A. I don't know. This writing (indicating) is Jesse Barr's writing. This I don't know. I have not the slightest idea.

Q. Now let me call attention to the next stub, 190, New York, July 28, 1903, cash, \$1,500. Do you have any recollection in regard to that? A. No, sir.

Q. You note there the initial "little b" in small letters on the second line? A. It is a question whether that is a "b" or not, Judge.

Q. There is not much doubt whether it is "b"? A. It looks like an "l" to me.

Q. Well, whether an "l" or a "b," would it refresh your recollection? A. No, sir.

Q. Goodsell's last name commences with G and his first name with L, does it not? A. Yes, sir.

Q. Does that refresh your recollection? A. Judge, I have not, absolutely, no knowledge or recollection of that at all. Google

Q. Let me call your attention to 192 on August 4, 1903, cash \$1,500, order J. W. C. A. That is not my order.

Q. And with a b there. Does that refresh your recollection as to what was done with that money? A. No, sir.

Q. None whatever? A. No, sir. That was drawn by a clerk.

Q. Who was that drawn by? A. Mr. Hackley's writing, I think it is.

Q. That check was drawn to your order? A. Apparently, or he might admit there that that check was drawn by my order, but I think drawn to my order.

Q. What was done with that \$1,500, do you know? A. I don't know, sir.

Q. Well, now, Mr. Cunningham, ten thousand dollars came in the way I have indicated. A letter goes to Goodsell a few days before, that if he will call there will be five thousand waiting for him. A few days afterwards a check is drawn for five thousand with the letter G under it, another one for \$1,500 with b. and a few days afterwards another for \$1,500 with b, making all \$8,000. Now, did not that money go to Goodsell and Bedell? A. Judge, I could not say. None of those entries are made in my writing. The letter was not written, dictated or signed by me. I have absolutely never had anything to do with any legislative business in any way or shape, and I don't know anything about it, Judge, more than you do.

Q. The stubs are all in the handwriting of your confidential clerk? A. Yes, sir.

Q. And he had access to your personal check book? A. Yes, sir.

Q. And no one could draw any funds out of your personal account except with your signature? A. Not necessarily — yes, with my signature, but I often sign checks ahead of time.

Q. And the last one was drawn by your order or to your order? A. Yes, sir.

Q. No one could have signed any five thousand dollar checks on your account without your knowledge? A. Yes, sir.

Q. Drawn any five thousand checks on your account without your knowledge? A. Yes, sir.

Q. Without your knowledge? A. Yes, sir.

Q. What for? A. Oftentimes, transfer of money from my personal account to the firm — they run ten or fifteen thousand several times, you will find it.

Q. You would have to sign the check? A. Yes, sometimes.

Q. And you would know what it was going for? A. Going to the firm, always.

Q. Why are those little initials down under the check? A. They undoubtedly mean something. There is no getting around that.

Q. No question about that, Mr. Cunningham, but don't you say that in the light of the evidence they undoubtedly mean that \$5,000 went to Goodsell and three thousand to Bedell? A. I will admit the coincidence.

Q. And a very striking one, isn't it? What became of the other two thousand? A. I don't know, sir.

Q. You can't give us any aid on that? A. Absolutely not.

Q. Well now, your memory having been refreshed possibly by what we have been going over in reference to the ten thousand, let us go back. Can you tell me now anything about the \$2,500 which was received on June 26th? A. I have no recollection at all, Judge.

Q. You knew Robinson, didn't you? A. Yes, sir.

Q. Did you know of moneys that Robinson sent to your firm which was credited to the accounts of men who were members of the Legislature? A. Only as they passed through the books. I did not know why or what for, or anything of that kind.

Q. You have heard Mr. Rogers testify, and also some of the other gentlemen who have been on the stand, that many of these credits were contributions, 'as they termed them, for political purposes. Did you have any knowledge of that? A. Absolutely none.

Q. None whatever? A. None whatever.

Q. Not in regard to any of them? A. Not any way or shape, with any one of them.

Q. You are quite sure about that? A. I am absolutely positive about it.

Q. Do you remember receiving money, acknowledging the receipt of money from Robinson for our mutual friend? A. I might have.

Q. Who was our mutual friend? A. The record will show.

Q. Who was it? A. I don't know. You show me the letter.

Q. Certainly. That is the trouble with every witness I have had. If I show him a letter that says so and so, he will say it says so and so. A. What I want to know, show me the letter, to whom I wrote that, and then I will know who you are talking about.

Q. As between you and Robinson, who were you talking about? Who was your mutual friend? A. Why, Rogers.

Q. I ask you whether you remember receiving money from Robinson for our mutual friend? A. Yes, but I didn't say anything about writing a letter.

Q. Then I asked you who our mutual friend was? A. That's different.

Q. Well, who was it? A. Tracy Rogers.

Q. I show you a copy of a letter in your letter book, October 27, 1902. "Mr. H. Robinson, 621 Broadway, New York. Dear Sir: Beg to acknowledge receipt of your check this day for 3000, which I have passed to the credit of our mutual friend. Yours truly, J. W. Cunningham." Did you send that letter? A. Yes.

Q. Why did you use the term "our mutual friend" rather than the term "Mr. Rogers?" A. Mr. Rogers was a very good close friend to both of us.

Q. Very true, but this was a letter written in the ordinary course of business. A. Very true, but it is a personal letter, you notice, in the form of the letter.

Q. Well, it is a letter acknowledging three thousand. Was that three thousand personal? A. Personal from Mr. Robinson to Mr. Rogers, yes, sir.

Q. What was done with it? A. I could not tell you now.

Q. Was it placed to the account of others? A. I presume so. If so, the letter will show you — I had a great deal of personal correspondence.

Q. Why did not you in the ordinary course of business acknowledge to Robinson the receipt of \$3,000 to the account of G. Tracy Rogers? A. Judge, if you had been in Wall street as long as I, you would know that business all down there is done in quite a personal way.

Q. Well, from an examination of your books and many other matters, you did not hesitate, when you received money to go to the credit of a customer, to acknowledge the receipt of it for his account. Why this term, "our mutual friend" in this letter, this particular instance; was there any reason for it? A. No reason whatever except what I told you.

Q. Did not Robinson have an account with you at the same time? A. I don't think he had a personal account.

Q. Now, out of this \$3,000, do you recall — this was on October 27, 1902 — now, I show you another letter, on November 1st, 1902: "Mr. H. Robinson, 621 Broadway, New York," simply. "Dear Sir: Beg to acknowledge receipt of your check for 500 special account, which we have passed to the credit of our mutual friend. Yours truly, J. W. Cunningham." Did you send that letter? A. I signed it.

Q. Who was our mutual friend? A. Must have been Mr. Rogers.

Q. Why special account? A. I presume —

Q. Not presume. Let me have your recollection? A. I have no recollection.

Q. That is an answer. Where you address him formally, simply, "Dear Sir: Beg to acknowledge receipt of your check for 500 special account, which we have passed to the credit of our mutual friend," why did not you say to the credit of G. Tracy Rogers? A. The same answer as I made before.

Q. Now, what became of the \$3,000? A. I don't know.

Q. Do you have any recollection whatsoever? A. None whatever.

Q. Now, did you not transfer the \$3,000 from Rogers' to Bedell's account? A. Not unless the books so show. I did not do it.

Q. Did you have any knowledge of it? A. No, sir.

Q. At the time? A. No, sir.

Q. Do you have any knowledge of it now? A. No, sir.

Q. I show you a letter, and see if it does refresh your recollection. "November 5, 1902. Mr. G. T. Rogers, Binghamton, New York. My Dear Tracy: Yours of the 4th instant received. The 3000 passed to the credit of your account on October 27 we

have transferred to the account of Louis Bedell. We herewith send you a memo. of all credits to date. Note you are going to Buffalo to-morrow. You might just as well go out to William Jennings Bryan territory while you are about it, for we have his kind of a stock market here. Things are as blue as possible, and your prayers for a republican victory have been answered in the wrong way. Yours very truly, J. W. C." Did you sign that letter? A. I did.

Q. Then you did transfer it to Bedell's account and you knew about it at the time? A. I did not. I was not the bookkeeper.

Q. You knew about it? A. I must have known about it.

Q. You told me you did not do it and did not know anything about it. A. I told you —

Q. Now, do you wish to correct it? A. Except, to the best of my recollection.

Q. Well now, where did the 500 go? That accounts for the 2,000. What became of the 500? A. I don't remember.

Q. Did not that go also, did not that go to Goodsell? A. I don't know.

Q. I show you a copy of Mr. Rogers' account, November 3, cash 500, cash 1500; now look across on the other side, cash 500, to L. Bedell 3,000, to L. Goodsell 2,000. A. I don't see where that 500 went.

Q. The 500 and the 1500 make 2,000, do they not? Then didn't it go to Goodsell and didn't it come from Robinson? A. I know where it came from, but according to this there was 2,000 on this date, and a charge to Mr. Goodsell's account — there were two different checks received.

Q. I will endeavor to refresh your recollection further in regard to it. Now I show you a copy of Robinson's account with the Morton Trust Company. You notice under November 5th, \$1500, and you notice under November 3, \$504.38, do you not? That would make up the 2,000 with \$4.38 in addition. A. Is that \$4.38 credited to this account?

Q. That \$4.38 may be some other small check? A. I am not going to admit that, for I don't know anything about their account.

Q. If that is a correct transcript of the account of Mr. Robin-

son with the Morton Trust Company, that would be true? A. Not with my knowledge. The sum total would be the same.

Q. Is it your purpose, Mr. Cunningham, to tell me all you know, or to tell me as little as you possibly can? A. Judge, I have known you for two months. If I have not been square with you and told you everything I could, I am mistaken.

Q. I want you to keep it up. Don't fence over technicalities. A. I don't want to, but I don't want to admit something I know nothing about.

Q. I simply asked you if it was not a check that did not appear in his account with the Morton Trust Company. Would you say now whether you knew that moneys were coming from Robinson, the treasurer — former treasurer of the Street Railway Association, and passing through your firm to the credit of men who were members of the Legislature? A. My memory is refreshed by these entries.

Q. Now you have heard the testimony given here of a \$3,000 check from H. H. Vreeland? A. Yes, sir.

Q. What did you know about that? A. I knew nothing about it whatever.

Q. Did you know how it was distributed? A. I did not, except as I see an entry here.

Q. Did you know Mr. Vreeland? A. I have met him recently.

Q. How recently did you meet him? A. I have known him possibly three years or two years.

Q. Had you known him before that? A. No, sir.

Q. You did not know him, then, at the time of these entries? A. No, sir.

Q. Now these credits, if you remember the testimony here of about \$3,000, \$2,375 went to the credit of Bedell to pay for 200 shares of Transportation which he had purchased through your house on that date. Do you recall that? A. I recall the fact as I see it in the book. I didn't know anything —

Q. \$300 of it went to the credit of Goodsell and \$325 to Rogers. Now did you know the manner in which this Transportation of Bedell's was paid for? A. No, sir, no knowledge.

Q. Did you know that it had been paid for? A. Not necessarily. I don't recall it. All I can tell now is what I see in the books.

Q. Well, did you see it in the books at the time? A. No, sir. I very seldom look at the books.

Q. As you see it in the books now, don't you think it was strange that Vreeland was paying for Transportation, or the proceeds of Vreeland's check was being used to pay for Transportation that Bedell had bought? A. I don't know that I ought to think on that.

Q. Do you know how it was that both Goodsell's and Bedell's Transportation was bought without margin? A. Yes, because I must have been satisfied with their credit at the time, or I would not have done it.

Q. Mr. Bedell's account opened with 200 Transportation, did it not? A. I don't recall.

Q. Mr. Goodsell's opened, and bought Transportation without any margin? A. That might be so.

Q. Did you usually allow customers to open purchases without margin? A. When I knew them.

Q. Did you know Mr. Goodsell before he opened the account? A. I must have known that his credit was all right. I don't think we knew him before. Pretty sure I didn't.

Q. Did you make any effort to get any margin from him? A. I could not recall now.

Q. Now did not you know that the proceeds of Vreeland's check was to pay for Bedell's Transportation, and also \$300 was going to Goodsell's account? A. No, sir, not a chance in the world of my knowing it.

Q. Well, don't you recall that you requested Rogers to get the \$3,000 for this very purpose? A. I don't recall.

Q. Well, would you forget a matter of that kind? A. I very easily would.

Q. I show you a letter dated April 12, 1900. "Mr. G. T. Rogers, Grand Hotel, City. Dear Tracy: Don't forget to get three thousand, account of Transportation business for Louis," etc. "It is quite necessary that this thing should not be delayed." Do you recall sending that? A. I signed that.

Q. Now five days after that, April 17, Mr. Vreeland sent his check for the three thousand, the proceeds of which was used to pay for this Transportation. Does that refresh your recollection? A. No, sir.

Q. Well, you could not have been very well satisfied in regard to Bedell's sufficiency, in view of your hasty call here for margin, could you? A. Not at the time I wrote the letter, certainly not.

Q. Who was the Louis? That must have been Bedell, spoken of there? A. I presume so.

Q. Was it Louis Bedell or Louis Goodsell? A. I could not tell positively, but I think, the transfer of the money, it must have been Mr. Bedell.

Q. You quite frequently wrote Mr. Rogers, using the name Louis. Now in your correspondence, which one of the gentlemen, Mr. Bedell or Mr. Goodsell, would you refer to by the use of his first name? A. Mr. Bedell.

Q. You knew Mr. Bedell better than Mr. Goodsell? A. He was the younger man, and I called him by his first name.

Q. When did you first meet Mr. Bedell? A. I don't recall.

Q. Under what circumstances? A. I don't recall that.

Q. Did you ever meet him in Albany? A. I don't think so. I am sure I never did.

Q. Have you frequently been in Albany? A. I have about twice in my life.

Q. Where did you form this intimate acquaintance with him, by which you replied to him by the use of his first name? A. Well, Judge, everybody that knows Tracy Rogers, knows all his friends by their first names.

Q. Well, he had two friends — evidently very close friends — whose first name was Louis. A. Well, I always respect gray hairs.

Q. Well then, that was because the Senator was the older man? A. Yes.

Q. Now I show you a copy of a letter dated September 3, 1903. "Mr. G. T. Rogers, Binghamton, New York. My dear Tracy: Louis telephoned he wants to see you without fail Tuesday, and I hope you will be able to get in touch with Elmira, as that part of it is important?" To whom did you refer there as Louis? A. I presume, Mr. Bedell.

Q. Why did you wish him to get in touch with Elmira? A. It looks like a margin pole.

Q. Why from Elmira? A. That's where Archie Baxter lives — Colonel Baxter lives.

Q. Well, who else lived in Elmira that you knew? A. I don't recall anybody now.

Q. Well, Elmira was the place from which that \$10,000 draft came from, wasn't it? A. I think so.

Q. It was the place from which the 2500 came? A. Where Mr. Cole's office was.

Q. Don't you think perhaps "to get in touch with Elmira" might be meant, to get in touch with Cole, the source of the supply? A. I could not tell.

Q. \$20,000 had come down — yes, nearly 25,000 in a month, in 1903. Now don't you think that possibly that is what you had in mind when you said "get in touch with Elmira?" A. I have not the slightest idea, Judge.

Q. Now you note, you say, "Louis telephoned he wants to see you without fail Tuesday, and I hope you will be able to get in touch with Elmira, as that part of it is important." To what did you refer there? A. Those are two distinct subjects there. I don't know what Louis had in his mind, and I can't tell what I had in mind, when I wrote, to get in touch with Elmira.

Q. Do you think perhaps Louis had in mind that he wanted some more funds from Elmira? A. I should.

Q. And he wanted Tracy to get in touch with him? A. I should think so, from what it says there.

Q. Don't think. A. I don't.

Q. You shouldn't think that was there. A. No, sir.

Q. What was the connection between your concern and Elmira? A. I don't know.

Q. And who there was to get in touch with there? A. I don't know.

Q. Well, the important fact that during the last of June and July, 1903, \$25,000 came from Elmira, led me to suspect that on September 3, 1903, getting in touch with Elmira meant, get in touch with Cole. A. I will make this positive statement, that it did not have any reference to Cole, because I never have known up to this day anything about the Street Railway Association finances.

Q. Well, you knew about the \$10,000? A. I know about any money that came over the counter in the office, but where it was before it came to the office I don't know.

Q. You know it came from Elmira? A. Ah, as the mail shows, certainly.

Q. You say get in touch with Elmira. Then you knew Elmira was the source of supply? A. Not in that connection, at all. It might have meant, as I said before, margin pole.

Q. Well, you note that Louis is to call on Tuesday? A. Yes, sir.

Q. "And I hope you will be able to get in touch with Elmira—" all in one sentence—"as that part of it is important." Now doesn't that refresh your recollection that Bedell was to be there Tuesday; Rogers was to get in touch with Elmira with funds—that funds would be there for Bedell on Tuesday? A. It don't refresh my memory at all, Judge.

Q. Did you know Senator Raines? A. I think I met him once; I am not sure, I think I did.

Q. Did you know him well? A. Never.

Q. Did you ever have any communications with him? A. Not that I recall.

Q. Did you ever write Rogers about Raines? A. I might have; I think I had a little account with Senator Raines.

Q. I show you a letter, February 25th, 1901, "Mr. G. T. Rogers, Binghamton, N. Y. Dear Tracy: Senator Raines called this morning, and paid for his 300 Transportation and took it up. I also told them that we had sold out his four hundred Tobacco which you bought at 11. We are sending his check for profit tomorrow at Albany. Had a very pleasant chat with the Senator. Glad to see he is one of our kind. I enclose you a lot of mail from Albany which you will undoubtedly want there by Wednesday. Yours very truly." Does that refresh your recollection with regard to your acquaintance with the Senator? A. Not at all.

Q. Did you know him? A. I met him there, and found him a very genial man, and said he was one of our kind, and was very proud to say it, too.

Q. Undoubtedly; no question about that. Now, what did you mean by the phrase "he is one of our kind?" A. I just told you.

Q. What was that? A. I just told you.

Q. Tell me again. A. I found him a very genial man.

Q. Did you know Senator Malby? A. Yes, sir.

Q. Did he have an account with you? A. Yes, sir.

Q. Did you ever know of our mutual friend making any contributions to the Republican cause in St. Lawrence county through Senator Malby? A. My memory is refreshed by the letter I heard read this morning.

Q. You sent the check, did you not? A. I presume so; I mean the firm sent it.

Q. Didn't you sign the letter? A. I don't know; I could tell if I saw the letter.

Q. If you did, then you knew something about Mr. Rogers' business outside of his connection with your firm, didn't you? A. Not necessarily.

Q. I show you the letter: "November 1st, 1900. Hon. George R. Malby, Ogdensburg, New York. Dear Sir: Enclosed find our check for \$500, which we send at the request of our mutual friend at Binghamton to help the Republican cause in your county. Yours very truly, Ellingwood & Cunningham." Is that your signature? A. No, sir.

Q. Whose is it? A. Mr. Ellingwood.

Q. Who was our mutual friend then? A. I presume Mr. Rogers.

Q. Mr. Ellingwood was then a member of the firm, was he not? A. What is the date of that, please?

Q. November 1st 1900? A. Yes.

Q. And did you receive the following letter from Mr. Malby in acknowledgment of the receipt of the contribution (showing witness letter)? A. Yes, sir.

Q. Reading as follows: "Ogdensburg, November 2nd, 1900. Messrs. Ellingwood and Cunningham, 41 Wall Street, New York City. Gentlemen: Your esteemed favor of recent date duly received, and contents noted. Permit me to thank you and our mutual friend for your kindness. Yours very truly. George R. Malby." Does that refresh your recollection in regard to the transaction? A. No, sir.

Q. Did you have any knowledge of it at all? A. I do not think I did. I may have.

Q. Did you know Senator Green? A. Very well.

Q. How long had you known him? A. About as long as I have known Mr. Rogers.

Q. You had a great many business transactions with Mr. Green? A. I did.

Q. Now, Mr. Cunningham, bearing in mind the facts concerning which I have been able to refresh your recollection since you went on the stand, the facts with reference to the transfers of these funds from Elmira to your firm and through your firm to the credit of men who were members of the Legislature, and through your own private account in connection with what was said to you by Robinson and by Rogers, do you still say, as you answered in your examination before Mr. Hotchkiss: I never had anything to do with any of his business, referring to Rogers, in any way outside of my firm, and know nothing about it? A. I do. I know nothing about it.

Judge BRUCE: That is all. There is one further question I want to ask you. Now, I show you one of the leaves from your loose-leaf ledger, A. S. Hackley, Special; that is the one which on July 13th, 1903, the \$7,500 was credited? A. Yes, sir.

Q. In whose handwriting it that? A. Carpenter's.

Q. That is the bookkeeper? A. Yes, sir.

Q. The bookkeeper whom we examined? A. Yes, sir.

Q. Did you ever see this account before? A. I might have; I do not recall it.

Q. I want to also show you Mr. Hackley's trading account. I show you another leaf from one of your loose-leaf ledgers, A. S. Hackley, apparently his trading account. Did you know of the existence of that account? A. Yes, sir.

Q. Mr. Hackley testified that he never knew that account was in the office, and when I first spoke to you about the account you stated to me that you did not know anything about it. Has your recollection been refreshed? A. Yes, sir.

Q. In what respect? A. The other afternoon, after you examined Mr. Hackley and he could not recall anything about it, which surprised me very much, I took this account and went through that item where the small credit balance was transferred to 20 Account, that gave me a cue as to what that account was. I looked up 20 Account and found it was for account of Dr. Benedict, who I unfortunately was backing up financially, and it cost me a great many thousands, but he saved Hackley's life,

and I wanted to show him some appreciation of it. Hackley went up there pretty near a dead boy and he brought him back, and we traded for him to make some money for him.

Q. Why didn't you trade in his own name? A. I don't know.

Q. Hackley said he never knew of that account? A. He told the truth when he said he did not know it was there; Hackley could not tell a lie to save his life.

Q. That is just what I thought of him. However, it seems strange and singular to me that here is an account extending for a year, dealing in a good many hundred shares of stock, of which he had no knowledge whatever? A. He corrected that afterwards, didn't he, and said he did recall it?

Q. He looked through the 20 Account and then he refreshed his memory. A. The same item refreshed his recollection that refreshed mine.

Q. Why did your firm carry an account in the name of Hackley for a customer, without his knowledge? A. Because Hackley was indirectly the beneficiary of that account through Dr. Benedict saving his life. Simply I tried to get Hackley to do apparently a favor for Dr. Benedict practically.

Q. Why shouldn't he know about it? A. I think he did; I have no doubt he did; I think he has forgotten it.

Q. Let me ask you a few questions in regard to A. S. Hackley Special, \$7,500. You notice 1903, July 23, \$500. Do you know where that \$500 went? A. No, sir.

Q. That went to the credit of George R. Malby from Hackley Special. Why to the credit of Malby, \$500 from Hackley Special? A. Mr. Rogers explained that this morning, and his explanation is correct.

Q. I am not asking you for his explanation; I am asking your explanation. A. When Mr. Malby's account was opened with us, he and I had a conversation on the subject of interest, which was entirely forgotten by me; that is to say, I did not turn around and tell the bookkeeper that I had made arrangements with Senator Malby to carry his account on a time-money basis. Not having told the bookkeeper, the bookkeeper, in making up his monthly statements, charged Senator Malby the average rate of interest the same as everybody else was charged; instead of

putting his debit balance against time-money interest, it was charged the average rate, through my fault. Now, then, Senator Malby, in the course of time when in Albany, would go over the matter with Mr. Rogers and find fault with him about the rate of interest, and as Mr. Rogers explained the matter to me afterwards, I took \$500 of my own and told him I would fix it up. When Malby came to close up the account some time after, we took up the matter and I made him a total allowance.

Q. Why from Hackley Special? Why not from the funds of the firm? A. I cannot tell — that was Mr. Rogers' personal money, I understand.

Q. You said he had a part of that \$7,500; could you tell us what part; have you any recollection in regard to it? A. He had \$500, at any rate.

Q. If your firm was going to give Senator Malby a credit of \$500, why not from the firm's funds? A. Because the firm knew nothing about that transaction at that time.

Q. There is September 14th, \$2,000 to Nixon. Did you know anything about that? A. Not except as the books show; I knew nothing about it.

Q. Did you know that a credit at the time was to be made from Hackley Special to Mr. Nixon, of \$2,000? A. No, sir, I do not think so.

Q. There is a credit of \$2,000 to Goodsell; did you know about that? A. I do not think I did.

Q. Did you know anything in regard to the disbursement of this \$7,500? A. I did not, except as I have just explained.

Q. Look at Mr. Malby's account. You find the account opened — it was a large, heavy account, was it not? A. Not particularly.

Q. Well, here is 500 Sugar, 1,000 Reading, 500 Southern Railway; 1,000 Wabash; 500 Louisville & Nashville, and so forth, aggregating perhaps from 20 to 25,000 shares; wouldn't you call that a reasonably heavy account? A. A very nice account, but not a heavy account.

Q. Bedell had an account for five years, and he made three trades; what would you say of that account? A. Not so good.

Q. This was a reasonably heavy account, wasn't it, opened in 1901, May, wasn't it? A. Yes, sir.

Q. This transfer that you speak of was made July 23, 1903, two years afterwards and more, was it not? A. Yes, sir.

Q. Why was it delayed for two years; didn't you go on and charge him the same rate of interest afterwards? A. I could not tell you.

Q. Look at the account and see? A. It would be a good long job to figure up that interest. Carpenter could do it.

Mr. KRESEL: Here, Mr. Carpenter.

JESSE BARR, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. Brooklyn.

Q. Whereabouts in Brooklyn? A. 1134 Bergen street.

Q. What is your business? A. Clerk.

Q. Where are you employed? A. Simmons & Slade.

Q. That is the same firm with which Mr. Cunningham is connected? A. Yes, sir.

Q. How long have you been connected with that firm? A. Four years..

Q. Where were you employed prior to that time? A. C. H. Ellingwood.

Q. And prior to that time? A. Ellingwood & Cunningham.

Q. In what capacity were you employed in Ellingwood & Cunningham? A. Different capacities; that of clerk.

Q. I show you Mr. Cunningham's personal check book; did you keep that book or a part of it? A. Yes, sir.

Q. I show you an entry under date of July 27th, 1903, Chemung Canal Trust Company, Elmira, New York, Order A. S. Hackley, \$10,000; is that in your handwriting? A. Yes, sir.

Q. Did you deposit a draft drawn on the Chemung Canal Trust Company on that date in the sum of \$10,000 to that account? A. I would not say I deposited the draft, but I made the entry in the book.

Q. What does the entry indicate? A. It indicates that we received a check on the Chemung Canal Trust Company.

Q. And what else does it indicate? A. Just exactly what it says.

Q. What does it say? A. To the order of A. S. Hackley.

Q. Does it indicate what you did with the check? A. Not exactly.

Q. You couldn't tell from that what you did with the check?

A. Well, the natural presumption is, it was deposited.

Q. Is it any question of presumption; isn't there an entry of the deposit? A. Yes.

Q. It is in your handwriting on the deposit side, check, Chemung Canal Trust Company, A. S. Hackley, \$10,000. Why don't you say that on that date a \$10,000 draft was deposited to his personal account? A. You asked me whether I deposited it.

Q. Do you mean by that, that is what you call depositing it, taking it over there personally? A. Yes, sir.

Q. You entered that deposit? A. Yes, sir.

Q. That was made on that date, was it not? A. Yes, sir.

Q. I show you now check stub No. 189, New York, July 28th, 1903, cash, \$5,000; whose writing is that? A. Mine.

Q. What does that indicate? A. I suppose —

Q. Not what you suppose, what does that indicate? A. That I made out a check for \$5,000 to the order of cash.

Q. Now, I show you down in the next one below — do you notice "G" there? A. Yes.

Q. Under this stub 189? A. Yes, sir.

Q. What does that indicate? A. I don't know.

Q. You notice the next stub, 190, July 22nd, 1903, cash; in whose handwriting is that? A. Mine.

Q. Do you notice the "B" down in there? A. Yes, sir.

Q. What does that indicate? A. I do not remember just exactly; it might mean that the check was checked up when it came back from the bank; I don't know.

Q. I don't want what it might mean. Do you know what it means? A. That is all I know.

Q. I do not see it on any of the other checks there that were checked up; I don't see your initials? A. That is my only knowledge of it.

Q. Is it knowledge or supposition? A. Supposition.

Q. If it is supposition based upon anything that is of any value, there ought to be such enumerations on other checks, shouldn't there; isn't that true? A. Not necessarily; I don't know what it means.

Q. Then why don't you say so. I knew that at the time; I mis-trusted it. Now, I will show you on the other side, 192, New York, August 4, 1903, cash to the order of J. W. C. Is that in your handwriting, \$1,500? A. No, sir.

Q. Whose handwriting is that? A. I really don't know.

Q. You know nothing about that, then? A. I don't know; let me see it again, will you please? (Examining entry.) It might be Mr. Hackley's, I don't know; I won't say.

Q. Did you put the "G" there, and the "B" here, and the other "B" over there? A. I don't know.

Q. You don't have any knowledge in regard to it? A. No, sir, I do not.

Judge BRUCE: That is all for to-day.

Chairman MERRITT: The Committee will stand adjourned until to-morrow morning at 11 o'clock.

Adjourned until Friday, September 23rd, 1910, at 11 A. M.

NINTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,

NEW YORK, *September 23rd*, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. VICTOR M. ALLEN. .
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ISIDOR J. KRESEL, ESQ., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

MARK NAVE, being called as a witness and duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. What is your business, Mr. Nave? A. I am an attorney.

Q. Where are your offices? A. At 2 Wall street.

Q. Do you know Henry A. Robinson? A. I do.

Q. Are you connected with his office? A. I am.

Q. In what capacity? A. I am his managing clerk.

Q. You are his managing clerk? A. Yes, sir.

Q. This Committee has been endeavoring for the past three weeks to serve a subpoena upon Mr. Robinson in order to secure

his attendance before the Committee. Can you give us any information as to his whereabouts? A. I cannot.

Q. When did you last see him? A. About the 18th of August.

Q. Where? A. In his office.

Q. Has he been at his office since? A. I understand he has.

Q. When last? A. On Tuesday last.

Q. Of this week? A. Yes, sir.

Q. Did you see him? A. No, sir.

Q. When did you last communicate with him? A. On Wednesday of this week.

Q. How? A. He telephoned to me.

Q. Where from? A. He didn't say.

Q. Did you inquire? A. I did not.

Q. Did you know at that time that we had been endeavoring to subpoena him? A. I did.

Q. Did you say anything to him in regard to that? A. I did not.

Q. Why not? A. He didn't ask me for any advice on the subject and I didn't feel like broaching it to him.

Q. Did you tell him of other people that had been inquiring for him at his office in his absence? A. I think not.

Q. Any clients, or business that had been urgent? A. I think not.

Q. Didn't you think it a matter of sufficient importance to call his attention to the fact that the Legislative Investigating Committee, acting under a joint resolution of the Legislature of this State, had been anxiously endeavoring to secure his attendance here? A. I knew that he knew that.

Q. You knew that he knew that — how did you know it? A. I knew that he had been notified to that effect.

Q. How did you know he had been? A. I don't know how I knew it, but I know that he did know it.

Q. How do you know he did know? A. I think it was because I had communicated with him previous to that time.

Q. Where? A. I telephoned to him.

Q. Where; at what point? A. At Yonkers.

Q. When? A. Some week or two before that.

Q. Can you give us with a little more precision the exact time? A. I cannot.

Q. What did you tell him when you telephoned to him at Yonkers? A. I told him that several rather suspicious looking persons whom I took to be process servers had been in the office.

Q. Suspicious looking persons—in what respect were they suspicious looking persons? A. They had the general furtive manner of the process server.

Q. Is a process server a suspicious person—you are an attorney and counsellor at law, are you not—is a process server a suspicious looking person? A. They generally have that appearance.

Q. Are they suspicious characters? A. I would not like to characterize them; I only say what I could observe.

Q. Now, what was there about the appearance of the process server employed by this Committee that impressed you with the idea that he was a suspicious person? A. Well, for one thing, he saw the elevator man and told him he would give him ten dollars if he would point out Mr. Robinson to him as he came into the building.

Q. Did you hear him tell him that? A. I did not.

Q. In what way did he appear suspicious to you? A. He was not dressed in a very respectable manner, and he told me——

Judge BRUCE: Will Mr. Raine please stand up? I think he is dressed about as respectably as you or I are, and I think he wears a good deal better clothes than I can afford to wear, and I would like to have him stand up. Is he here?

Q. In what way wasn't he respectably dressed? A. I don't know; his general aspect; I am not a tailor.

Q. Now, having told Mr. Robinson that these suspicious characters were around there wanting to serve a process on him, what did he say? A. He said that he knew about that.

Q. He said he knew about that. Did he say how he ascertained it? A. He did not.

Q. What else did he say? A. He asked me if there was anything in the office that called for his attention at present.

Q. What did you tell him? A. I told him I thought not.

Q. What did he say further about knowing that the Committee wanted him and about his going to attend here? A. He didn't say anything.

Q. Have you communicated with him since then other than last Wednesday? A. I have not.

Q. Do you know where he is now? A. I do not.

Q. Can you give us any information that would aid us in locating him? A. I don't think I could.

Q. Do you recall having a conversation with Mr. Kresel over the telephone, one of the assistants to this Committee, law assistants, in regard to locating Mr. Robinson? A. Yes, sir.

Q. What did you tell Mr. Kresel? A. I told him I believed I could get in touch with Mr. Robinson.

Q. Did you get in touch with him? A. He telephoned me Wednesday.

Q. When you got in touch with him, what did you say? A. I repeated the substance of our conversation, I think.

Q. Didn't you tell me a few minutes ago that when you talked with him on Wednesday you didn't mention the fact that we wanted him, because you knew he knew it? Now you say you did mention it. Has your recollection been refreshed? A. No, sir; you don't understand.

Q. You told Mr. Kresel you would get in touch with him, and you did get in touch with him. What did you say to him? A. I told him I believed I could get in touch with him.

Q. Yes, and you did get in touch with him. What did you say to him about his attendance? A. I didn't say anything to him about it.

Q. You told Mr. Kresel you would speak to him? A. Yes, I did.

Q. Did you speak to him? A. I did not.

Q. Why not? A. I happened to be busy at the time and I didn't think it was wise to speak to him on that matter.

Q. It wasn't wise to speak to him on that matter? A. I knew that he knew of the matter and I didn't think it was my place to bring it to his attention again.

Q. You knew he was keeping out of the way of the process server, did you? A. I did not.

Q. Didn't you state to Mr. Kresel that you would talk with Mr. Robinson about the matter and let Mr. Kresel know what he said about it? A. I don't think I did.

Q. That is your best recollection? A. That is my best recollection.

Q. Don't you remember Mr. Kresel stating to you that he wished you to communicate with Mr. Robinson and tell him the anxiety which the Committee had to have his presence here, and you said you would do so, and didn't Mr. Kresel say, "Will you let me know what he says," and didn't you say you would? A. I don't remember.

Q. You can't tell us where we can find him? A. No, sir, I cannot.

Judge BRUCE (to the witness): I will inform you of the day to which the Committee adjourns after to-day, and at its next meeting will you kindly attend?

The WITNESS: Yes, sir.

Judge BRUCE: That is all.

Q. In the meantime will you endeavor to get into communication with Mr. Robinson? A. I probably will be in communication with him.

Q. No. Will you endeavor to get into communication with him — will you? A. I shall, yes.

Q. Thank you. And if you get into communication with him will you kindly tell him of the solicitude which the Committee has for his presence before it? A. Yes, sir.

Q. And will you tell him that the concurrent resolution under which this Committee is acting requires it to report by the 15th of January, and we purpose to hold public sessions up to that time; that we would like to have his presence at the earliest date before that, but still we can use him on the 15th, so long as the life of the Committee lasts — will you tell him? We want him at the next session, but call his attention to the fact that the life of the Committee will extend at least to the 15th of January, and will you kindly be in attendance at the next session? A. Yes, sir.

Judge BRUCE: I made that statement, Mr. Chairman, to the witness, because after consultation with you, as I advised you, we can use Mr. Robinson's testimony even if it were as late as the 15th of January.

W. W. COLE, recalled:

Examination by Judge BRUCE:

Q. Mr. Cole, you recall that when you were last upon the stand I was examining you with reference to your action as attorney in the matter of the claim of one Charles Laukemann against the Third Avenue Railroad — do you recall that? A. I do.

Q. Now you asked me if you might have until this morning in order to refresh your recollection in regard to it. Has your recollection been refreshed? A. Somewhat; yes, sir.

Q. Will you give me the facts in regard to the transaction? A. In taking charge of that account I had been told by Mr. Rogers that I would not be responsible, that all accounts would be turned over to him just as soon as, or deposits made as soon as checks were sent in from any company, that he with his associates would look after pushing the collections. As fast as these collections came in my clerk would bring them in and lay them on my desk for me to sign, and then would take them to be deposited. This came along with other collections, and escaped my attention, or if I noticed it I knew that the Metropolitan was the one that was making the deposit, and Mr. Rogers had called for the assessments, etc., and I made the endorsement and had nothing further to do with it.

Q. Oh, yes, that is all true, Mr. Cole. You testified to that much in regard to the collection of these unpaid assessments, but this was not an assessment. This was a settlement of a claim against the Third Avenue Road for injuries received by a man who had been thrown off the rear of a car at 99th street. This had nothing to do with the regular assessments; in fact, there is nothing on the face of it that would suggest at all that it had anything whatsoever to do with assessments. Didn't that attract your attention? Just look at the voucher again and also at the draft. There is nothing there with relation to any assessment. A. Vouchers came along with more or less written on them, and the clerk spread them on the desk for me to sign, and I signed hundreds of them, and as far as checks having two names upon them is concerned, that was not unusual. The clerk would bring

them to me and then take them over and deposit them, and I gave no further attention to it.

Q. But this large yellow sheet of paper, with this recital on it about this passenger who fell off the car at 99th street, and who had this injury to the spine, shock and general contusions, this large amount of \$8,000, your signature, not as W. W. Cole, but as W. W. Cole, Attorney, and then the accompanying draft payable to the order of Charles Laukemann or W. W. Cole, Attorney, your endorsement as attorney — that certainly could not pass under your eye as a matter of routine business. Didn't that attract your attention? A. It did not, because I was secretary and president and vice president and general manager and a lot of things, and I had seven or eight different titles, and as a check would come in it might be signed one thing or another, and I might go right ahead and endorse it just as it was written on the check, just as a man does when his name is misspelled.

Q. But this was your only action as attorney representing a man who was prosecuting the Third Avenue Road for injuries, wasn't it? A. If my clerk had brought it to my attention I would have looked over the vouchers, a great many of them have a great deal written on them.

Q. How many like this went through? A. I don't know.

Q. How many contributions were made by the Metropolitan or the Third Avenue, or other surface railroads, in this way, to the fund that was to be used for the purpose of electing good men to the Legislature? A. I don't remember that there were any.

Q. Will you swear positively that that was the only instance? A. I won't swear positively that it was.

Q. There may have been others? A. There may have been others, but I am pretty sure there were not.

Q. You are pretty sure there were not? A. There may have been.

Q. Do you think there were others? A. I don't think there was, but there might have been.

Q. If there were others, how many would you say? A. I could not say. As soon as I got the checks I gave them to the clerk to deposit them, and gave no particular attention to them.

Q. Is that the only explanation you have to make after refreshing your recollection? A. That is the only thing I can give.

Q. Has your memory been refreshed in regard to the donation which was to be made, and if made would secure the passage of the Cassidy bill? A. There wasn't any donation made.

Q. You told me at your last hearing that you had no recollection in regard to me. How has your memory been refreshed so that you are now able to testify that there was no donation made? A. I made no donation to anybody.

Q. You told me that you had no recollection in regard to the matter whatsoever. A. I didn't have. I haven't very much now, but I have looked it over and I remember how that sort of thing would be taken care of.

Q. You remember that you thought it of very great importance, and you wrote Mr. Allen that your advice was that if the donation was made, and you would undertake the collection of the donation, you would undertake that work, and if it were made, that the passage of the bill would be assured. You recall that, do you not? A. I recall that; yes, sir.

Q. Now, in what way has your memory been refreshed at this time — in the intervening time, rather — so you are now able to testify positively that no donation was made? A. I talked with the president of the Elmira Water Light over the phone.

Q. What is his name? A. Mr. Tompkins.

Q. And what did you say to him? A. I asked him if he could remember any of the incidents attached to that bill, and whether any donations were made.

Q. What did he say? A. He said he did not remember the thing particularly, but no donations were made. He called my attention to the fact that the Elmira Water Light did not make any donations, except as that assessment was made upon us; that the only donations made was in the regular channels, or perhaps some of the officers, as individuals.

Q. What else was said? A. That is all.

Q. Who else have you talked to about regarding this matter? A. No one else in regard to this matter.

Q. Well, now, you remember in that communication which I showed you, which you made to Mr. Allen in regard to this matter?

A. Oh, I beg your pardon, I did talk to Mr. Allen over the phone, too.

Q. What did he say? A. He said he didn't remember any particular thing.

Q. What else did he say? A. That is about all. I asked him if he could not give me some idea as to what that donation was, and he said absolutely he did not remember it.

Q. Did you talk with anyone else except Mr. Tompkins and Mr. Allen? A. No, sir.

Q. Are you quite sure? A. Quite sure in regard to that.

Q. Now, in the communication you made to Mr. Allen at the time, you said you talked to some of the leading men in the district. I think I asked you if you talked with Mr. Stanchfield, sitting here. You said not. A. No, sir.

Q. Is that correct? A. That is correct.

Q. I think you also said you did not talk with Mr. Fassett? A. I think not. I am quite sure.

Q. Do you recall whom you did talk with? A. I think I talked with Sherman Moreland, and talked with Mr. Cassidy, and talked with practically everybody I knew, because I believed this bill a good thing, and as an engineer, I did not think that high potential wires should go through the highways, and I was looking if some method could not be had where they could be put through the fields and away from the public.

Q. I am not asking you with whom you talked about the bill. That is not what I am concerned about at present. What I am concerned about is the donation. You stated in your letter to Mr. Allen that you talked with several of the leading men in the district about the advisability of making the donation, and you were advised that it was a wise thing to do, and if it were made, it would insure the passage of the bill. Now, I understand you to say that you did not talk with Mr. Stanchfield, who was present the other day. You don't recall having talked with Mr. Fassett. Now, with whom did you talk, not about the bill, but about the donation? A. I don't remember anyone who I did talk with about any donation, unless it was with Mr. Tompkins, the officer of the company, because if there was anything of the kind, he attended to it.

Q. Can you give me any other name? A. No, sir, I cannot. I would attend to any donations that would be made.

Q. Who looked after the donations? A. Why, there was none made by our company, except as members of the company made donations to the party, the same as anyone would do.

Q. With whom have you talked about the \$8,000 claim against the Third Avenue Road, to refresh your recollection? A. I talked with Mr. Rogers.

Q. G. Tracy Rogers? A. G. Tracy Rogers; yes, sir.

Q. Well, did you get any refreshing of recollection from Mr. Rogers? A. Not a bit. He said he did not know anything about the incident.

Q. Did you talk with any one else beside Mr. Rogers? A. No, sir.

Q. What led you to think that Mr. Rogers might possibly refresh your recollection? A. Why, he had charge of that fund and its disposition, etc., and I thought possibly he might know something about it.

Q. Well, you were here at his examination yesterday? A. No, sir, I was not.

Q. Unfortunately, because he had a very poor memory, he consequently probably would not be able to refresh your memory about a time so long ago. Now, did you talk with Mr. Robinson about it, because you knew that it was Mr. Robinson that sent the \$8,000? A. I don't think I did. I never had a word of conversation with Mr. Robinson.

Q. Yes, but this transaction was with Robinson? A. I don't know. It was sent by the Metropolitan, I see there, and the checks usually came direct from the railroad company, and we took them right up, as soon as we saw the name of the railroad company, and made a note that such a railroad had paid it, and put it on deposit.

Q. Who made the remittance, Mr. Robinson or Mr. Vreeland? A. I don't think either name was mentioned. It would come as a voucher or something of the kind.

Q. Any inquiries with the Metropolitan, with whom did you communicate? A. I communicated with Mr. Robinson.

Q. Did it suggest to your mind that Mr. Robinson would

be a proper party to communicate with in order to have your memory refreshed in regard to this transaction? A. Yes, sir.

Q. Did you endeavor to communicate with him? A. I didn't know where to find him.

Q. Did you look for him? A. No, sir, because I didn't know where to look.

Q. You heard Mr. Nave's examination just prior to your going on the stand? A. Yes, sir.

Q. Now, will you kindly inform yourself as to the time when this Committee adjourns after to-day, and between now and the next meeting of the Committee, endeavor to get in communication with Mr. Robinson, and see whether or not he cannot refresh your recollection in regard to Mr. Lukeman, who fell off the car? A. I will.

GEORGE R. MALBY, called as a witness, being duly sworn,
testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Malby? A. Odensburg, New York.

Q. And what is your business? A. I am a lawyer.

Q. And you also hold a public office? A. I do.

Q. What office? A. Representative in Congress.

Q. And how long have you been a Representative in Congress? A. I am now serving my second term.

Q. Prior to that time what public office did you hold? A. Well, the first office I held was magistrate of my native town. I was afterwards a Member of the Assembly for five years, and New York State Senator, representing my district for eleven years after that.

Q. And when did your services in the Legislature commence, do you recall the year? A. January 1st, 1891.

Q. You were at one time Speaker of the Assembly, were you not? A. Yes, sir, in 1894.

Q. And when did your service in the Legislature as a Senator terminate? A. On the 30th day of December, 1906.

Q. Were you during your term in the Legislature acquainted with Mr. G. Tracy Rogers? A. I was, sir.

Q. How long had you known him? A. That is difficult to say. I have known Mr. Rogers for a good many years; that is, I have known of Mr. Rogers for a good many years

Q. Would you say as far back as 1899? A. I would rather imagine that it was along about that time.

Q. Did you know that he was president of the Street Railway Association of the State of New York? A. I heard that he was at one time. As to what time that was I do not recall, but I understood that he was president of the Street Railway Association.

Q. It appears here that he became president of the Street Railway Association in 1893 — 1894, and remained president until 1903 — 1904? A. Yes.

Q. Do you recall whether or not you knew he was president of the Street Railway Association during the years 1899, 1900, 1901, 1902 and 1903? A. My impression is that I did know at that time that he was president.

Q. He was frequently present in Albany, was he not, Senator? A. That, Governor, I cannot tell you; I cannot tell you whether he was or not. I saw Mr. Rogers very infrequently when he was at Albany. I did see him at Albany at different times, but not to say frequently.

Q. Were you at any time during your service in either House of the Legislature a member of the Committee on Railroads? A. I was not.

Q. Do you remember seeing Mr. Rogers frequently about the corridors of the Capitol or in the Hotel Ten Eyck during your term in either house of the Legislature? A. I cannot say that I did frequently; I saw him now and then.

Q. Did you know Mr. J. W. Cunningham? A. I did.

Q. And when did your acquaintance with Mr. J. W. Cunningham begin? A. I think that I met Mr. Cunningham about the year 1900, and perhaps a little prior thereto.

Q. Give me the circumstances under which you became acquainted with Mr. J. W. Cunningham? A. I think the first time I met Mr. Cunningham was at a Republican State Convention. I think it was either in 1900 or 1898. I cannot tell exactly which.

Q. And who introduced you to him? A. I cannot quite tell that. I met him there.

Q. Did you know at that time that he was a member of a brokerage firm in Wall street? A. I did not, at that time, no, sir.

Q. When did you first learn that he was connected with a brokerage firm in Wall street known as Ellingwood & Cunningham? A. The exact date I have not in mind, but I should say it was about in 1900.

Q. What were the circumstances of your acquiring that knowledge? A. I do not know exactly how I found out that he was a banker and broker. I do recall the reason why I went there to trade.

Q. You did open an account subsequently there, did you? A. Yes, sir.

Q. Do you remember when that account was opened? A. I do; substantially it was in the spring of 1901, I think.

Q. I show you several loose leaves from the loose leaf ledger of the firm of Ellingwood & Cunningham containing your account; will you state to me when the account was opened? A. It appears to have been opened on May 13th, 1901.

Q. Does that refresh your recollection as to the time when you first learned that Mr. Cunningham was a member of a brokerage firm in Wall street? A. I should say I had known it for some time prior to that.

Q. And how did you learn it? A. That would be very difficult to say.

Q. How did you come to open an account with them? A. The way I happened to open an account with them was that my friend, Col. Archie E. Baxter, of Elmira, had a son who was employed in the firm of Ellingwood & Cunningham, and Colonel Baxter I assume knew that I was in the habit of buying and selling stocks more or less; he said that the firm of Ellingwood & Cunningham was a young firm, entirely responsible, which employed his son, and that if I desired to transact business with them he would be pleased to have me do it, as it might have a tendency to benefit his son. Some time after that I did visit the brokerage office. I do not know that I bought anything at that time, but it resulted, however, in my opening an account.

Q. Had you been in the habit of trading in stocks prior to that time? A. I had, sir.

Q. With what firm? A. Well, with a good many firms.

Q. Give me the names of some of them; all of them if you can remember? A. I do not know that I can remember all of them. I did business with Price, McCormick & Co.; with the Cable & Telegraph Company, I think that was the name of it; yes, Cable & Telegraph Company I think was the name of it, but I am not quite sure; Thomas Maclay & Company; Haight & Frees; I think some others, I do not now recall.

Q. Can you tell of any others? A. Not just at present.

Q. How long did your account continue with Ellingwood & Cunningham; will you kindly refresh your recollection with your account before you? A. I recall it was closed sometime in the Fall of 1904.

Q. December 29th, 1904, is the last entry, is it not? A. I would assume that would be about the date.

Q. Now, Senator, I notice that your account opened on May 13th, 1901, with a purchase of 100 Union Pacific, 100 Atchison Preferred, 100 Southern Railway, and 100 Great Northern Rights; and that on May 10th, which was three days prior to the opening of your account, you deposited a margin of \$5,000, and on the 14th, four days later, there is a deposit of another margin of \$5,000. From what source were those margins drawn? A. I can only state to you from my recollection in relation to that. I assume that they were drawn from my bank account.

Q. Where did you keep your bank account at that time? A. I think my bank account was kept with the National Bank at Ogdensburg.

Q. Did you have any other account? A. I think I did.

Q. Will you tell me where they were? A. This is only my recollection, but I think I had an account at that time with Harvey Fiske & Company of New York.

Q. Where did those margins come from, the \$10,000; was it cash drawn from your bankers, or was it realized from the sale of stocks, or what source? A. I speak simply from recollection. I have not any positive recollection about that matter of ten years ago.

Q. What is your best recollection? A. My recollection is that it came from one of the banks —

Q. Have you got your vouchers and check books? A. I presume I have some of them, but I am not sure about the balance.

Q. Will you consult them and give us the information as to the source of these two deposits? A. So far as I am able.

Q. I say so far as you find you are able, and if you are not— A. I will give you such information as I have, Governor, about the matter.

Q. You will notice, Mr. Malby, that under the date, looking at your account — let me ask you first, did you know a man by the name of Alexander S. Haekley? A. I knew that there was employed in some subordinate position in the firm of Ellingwood & Cunningham a young man that they used to call Alec; I do not recall that I ever knew what his other name was; I may or may not.

Q. Did you ever have any business relations with him? A. I never did.

Q. Did you ever have any conversation with him? A. I may have said "Good morning" to him; no business conversation, no.

Q. You were a pretty heavy operator, were you not? A. Well, heavier than I wish I was, to be frank about it.

Q. You were a pretty heavy operator, were you not, with Ellingwood & Cunningham? A. That is a comparative term of course, Governor, you understand.

Q. Did you have any other brokerage account at this time? A. I do not recall exactly whether I did or not. This goes over a period of some four years, and I may have had, however, some operation during that period. I may have had some other account, but I do not recall now whether I did or not.

Q. I notice the purchase of 500 Wabash, 500 Steel, 500 Wabash Preferred, 1,000 Reading, another thousand Reading, the sale of 2,000 Reading, another purchase of 1,000 Reading; 500 Southern Railway; 500 Louisville & Nashville; 1,000 Wabash Preferred. Don't you think that is a pretty large operation? A. It was large enough for me I say; too large.

Q. Coming back to my former question; you were a pretty heavy operator were you not, through Ellingwood & Cunningham? A. You will have to judge of that, Governor.

Q. Now, turn to your account under the sheet dated July 23rd, 1903; you notice this entry, do you not, July 23rd, 1903, "From Hackley Special, \$500," credited to your account? A. I notice that the sheet so says.

Q. Now, it appears, Senator, from the evidence given before this Committee, that some time shortly prior to that time, July 13th, in the same year, there had been sent from the treasury of the Street Railway Association of the State of New York to Ellingwood & Cunningham \$7,500, which was credited on their books to the account of "A. S. Hackley Special," who was this young clerk. Mr. Hackley testified that he had no knowledge whatsoever of the opening of that account or the making of that credit. It appeared that the first draft out of that account was a draft of \$300, of July 23rd, 1903, which was placed to your account, as you note upon the sheet to which I have called your attention. Now, I wish to give you the fullest opportunity, Senator, to explain the transaction? A. I think, perhaps, Governor, to give you and the Committee a full understanding with reference to that matter I had better commence with Hackley, himself; my recollection of Mr. Hackley, if that be his name, the young man commonly called Alec, in the office, was that he occupied a position as bookkeeper there. I never had any business transactions with Mr. Hackley at any time. I never kept any account with Mr. Hackley at any time. I never had any conversation with Mr. Hackley about any business matter, good, bad or indifferent, at any time. I never kept any account with Mr. Hackley, and he never kept any account with me. I never knew that there was a Hackley account. I had no knowledge or information or belief that there ever was kept by Mr. Hackley or by any other person connected with the firm of Ellingwood & Cunningham an account called the Hackley account; so far as I am concerned the Hackley account is eliminated from my account, because none of my operations had anything to do with the Hackley account. No checks were ever sent to me by a Mr. Hackley. No notice was ever given to me by Mr. Hackley or by anyone else that any moneys had been credited to my account which came from the Hackley account or any other account than that of Ellingwood & Cunningham. Now, perhaps, as the

Committee has furnished me a copy of it, Governor, if I take up the ledger account I can refer to it with more readiness, and I will ask you to permit me to do so.

Q. That copy was furnished, Mr. Cunningham stating that you had requested him to request the Committee for a copy of the account, which we furnished also to other persons having accounts, we having control of the books, he requested copies thereof. A. It came by the courtesy of the Committee, I take it; I presume it is correct. It will be observed, as you have already called my attention to, that my account was opened May 13th, 1901. My business transactions were chiefly conducted with Mr. Cunningham, of the firm. My understanding and agreement with Mr. Cunningham at the time the account was opened was that if the account should continue for some considerable time that the rate of interest to be charged should be what I would call a time rate rather than the quotations, the varying quotations of money on Wall street from day to day or from week to week or from month to month; that is, it should be a uniform, fair commercial rate. Money, according to my recollection, varied considerably during the existence of this account, I think it was as low as one per cent, and I guess it was as high as forty, but only for a day perhaps at the extreme height.

Q. You are speaking now of call money? A. I am speaking of call money. The account having run for a period of nearly four years of course finally came under, at least that portion of the arrangement which I had with Mr. Cunningham that my rate of interest should be the usual commercial rate of interest. Of course, perhaps that could not be known to either one of us in the beginning. Hence the charge for interest was made, and in fact always made not less than six per cent, which was largely in excess of the commercial rate. It increased even above six per cent; in October, 1901, a charge was made of eight per cent; in October, 1902, the charge was ten per cent; in August, 1903, it was eight per cent. Shortly after the account was opened, some three or four months after the account was opened, I complained to Mr. Cunningham about this rate of interest, and made inquiry as to what rate I was being charged, and he replied that

the bookkeeper had charged my account at six per cent, and that he had directed the bookkeeper, however, to rebate one per cent for, I think, the first three months; the matter went along from time to time, and from month to month, the charge of six per cent continued, and whenever I saw Mr. Cunningham, and sometimes Mr. Rogers, I remonstrated with them that that was out of all proportion to the value of time money. Mr. Cunningham's reply was that money was high on the market, a part of the time at least, but I pointed out the fact to be that money was not nearly so high so far as I could learn it as I was being charged. I threatened at various times to close my account. I think I saw him some time in June, 1903, I think it was in June. I know it was in the spring after the Legislature adjourned, and severely remonstrated with him about my rate of interest. The market was on the decline, impossible to sell any stocks at that time; that is, it was an inopportune time to sell stocks, and he said he would consult with his partners and see what could be done. I had also seen Mr. Rogers and I had protested to him that my interest account was eating up the principal. I was not, as you will observe, at that time buying any stocks. I do not recall that I bought any stocks to amount to anything after August, 1902. It was simply a case of carry with me until such times would arrive that I could get out. You asked if the account is large. It was large for me; it was burdensome. I was forced by the condition of the market and my financial distress to discontinue the further purchase of stocks, I think about the month of August, 1902, or about a year and a half, or less than a year and a half, after the account was opened. I appeared in New York I think in the month of September, 1903, and saw Mr. Cunningham in his office, and he said: "We have credited your account in the sum of \$500," I think the amount was, "on that interest matter." I did not know up to that time that it had been done; no written notice had been served on me that it had been done, and I did not know that it had been done until I visited New York, I think in the month of September, 1903. I think so, because I hold in my hand a letter which if you will permit me I will read which I took from my letter files yesterday and which I desire to insert in the record. It reads in part as

follows — the balance of it you can see if you wish, but it does not have any relation to this: "Ogdensburgh, N. Y., September 11th, 1903." As I recall it that credit was in July —

Q. July 23rd, 1903? A. The 23rd, 1903. As I say, I do not recall that I was in New York during the month of July or August and certainly do not recall the time except as it appears upon the ledger the time the credit was made, and do not think that I knew it had been credited until after this letter was written, partly because of the contents of the letter itself: "Ogdensburg, N. Y., September 11th, 1903. Messrs. Ellingwood & Cunningham, 40 Wall street, New York city. Gentlemen: I am in receipt of your statement of my account to September 1st. I have been unable to give it particular attention, but observe that there must be some confusion in relation to it; in fact I am quite unable to understand it at all. Your charge for interest of \$681 would, as I figure it, be about $7\frac{3}{4}$ per cent." As a matter of fact it is 8 per cent. "Of course I understand that this must be a mistake, as it would be utterly impossible for me to carry the account at such a rate. I have the whole matter now under consideration, and if time will permit will go over it during the past year and see just where we are at." If you want to see the rest of the letter, Governor, you may. It has reference to some other matters.

Q. If you say it is a personal matter I do not care to see it. A. It is business; it has reference to business matters; that is all. I do recall having been in New York in the month of September or about that time, and my present recollection is that it was at that time that Mr. Cunningham called my attention to the fact that they had credited my account on account of the interest charges in the sum of \$500. I may say that so far as I was concerned then and so far as I have ever been concerned since, that I have always assumed that that credit was a credit from the firm of Ellingwood & Cunningham as bankers and brokers, to apply, or in reduction, at least, of the interest upon my account. It had no other relation so far as I know or so far as I was concerned. Now, the matter went along until, I think, the month of September, 1904; I was at the city of New York again. I saw Mr. Cunningham, and I said, "Mr. Cunningham, the time has

come when this interest account must be finally adjusted. I can no longer carry the account at your rate of interest." I said, "You know that I am not trading in the market and have not been for substantially two years. This has simply been a load, and if this interest account is not adjusted my account must be closed." Well, he says, "what do you want?" I said, "I want my bargain carried out which we made in the beginning that I should be charged practically commercial rates." Well, he says, "I will do it." He says, "The account has been running a long time; I will do it." Well, I said, "I wish you would;" and he did adjust it along the lines which he had agreed to substantially, I think, making the account a four per cent account instead of a six or eight per cent account. This resulted in his crediting back to me something like \$5,000 additional for interest. When that matter was completed and the amount had been credited back, and, so far as the interest matter was concerned, made satisfactorily, finally it occurred to me that I had better close my account. It was really no time for closing an account, but the market had been a falling market. I had learned that there was a possibility of the firm being more or less involved owing to the fact that the market was heavily on the decline, and owing to the further fact that their customers had not answered calls for margins promptly and were owing them large sums of money. Anyway, it occurred to me that I had better close that account; I felt that I was obliged to close the account. I did close the account with a net cash loss to me, covering the entire transaction, of more than \$8,000. I think, Governor, that that covers about my theory of that account.

Q. Was that balance paid? A. Never.

Q. I mean by you; did you pay the loss? A. I did, yes, sir; of course I did. I had to pay the loss.

Q. You knew at the time you opened this account, did you, Senator, that Mr. Rogers was a special partner in this firm? A. Governor, if you will just pardon me before I answer that.

Q. All right; question withdrawn. A. On the question of interest: I have a letter here dated Ogdensburg, New York, September 20th, 1901. Messrs. Ellingwood & Cunningham, bankers, 41 Wall street, New York city. Gentlemen: Your state-

ment of August 31st was duly received and contents noted. I notice that your interest charge amounts to \$59.51. You do not say at what rate you have charged me, and inasmuch as the matter is a little mixed I would be pleased to have you state what rate of interest I am being charged, and greatly oblige, very truly yours." It was a little mixed, because the account was young, and it had not been there a sufficient length of time to have it determined whether it should be a long account or a short one. In reply to that I received a letter under date of September 23rd, 1901, containing among other things this statement: "In regard to interest I note our bookkeeper has been charging you six per cent, and I herewith enclose credit memoranda for one per cent covering the last three months. J. W. Cunningham." I also desire to call your attention to the fact that after my conversation with Mr. Cunningham in September, 1904, that the rate of interest for the last month as credited upon your account there was four per cent pursuant to the arrangement which we made at that time, but all the rest of the time it was never less than six per cent; from that to ten.

Q. Now, Senator, did you know at the time you opened this account that Mr. G. Tracy Rogers was a special partner in the firm of Ellingwood & Cunningham? A. I think I did.

Q. Tell me when you first learned of this credit to which I have called your attention, of July 23rd, 1903, of Hackley Special, \$500? A. I never knew that it came from Hackley Special account until by the courtesy of the Committee I got a copy of the account.

Q. Was that the first time you had ever known of this entry upon the books? A. Yes, sir; in that form, yes sir.

Q. When did you first learn that on that day they had credited you with \$500? A. I think, as I have stated, that it was in the month of September, 1903, upon the occasion of a visit to the office of the firm, that Mr. Cunningham stated to me by word of mouth that they had adjusted my interest matters by a credit of \$500.

Q. Didn't you from time to time receive monthly statements of your account? A. Those statements came at irregular intervals; I did not receive them monthly; no, sir, I did not.

Q. Didn't you receive them from time to time? A. Yes, from time to time I must have received statements.

Q. Did the statement of your account which you received next after this entry contain this entry? A. It did not contain the entry I may say with positiveness, not in any such form.

Q. What form did it contain it? A. That I cannot say because I have not the copy, but it probably contained a credit of \$500, but certainly not in such form as that.

Q. Did it state the source from which the \$500 came? A. It did not as I recall; I have not the slightest recollection with reference to that account in that form, because there was not any reason why it should be in that form.

Q. Going back to the conversation with Mr. Cunningham in regard to this credit of \$500 in rebate, as you state, of interest, were you satisfied with that? A. I was not, I kept right straight along, as you will see by my letter of September, 1903, advising them.

Q. Now, a hasty computation of this account which we have been able to make would indicate that instead of in one instance you had been charged a uniform rate of six per cent; is that correct? A. I do not figure it so, no, sir.

Q. You do not? A. I do not.

Q. Will you point out the months where a greater rate or larger rate than six per cent is charged on your balances? A. Well, I think I have a memoranda here of that, Governor, if you will pardon me for a moment. I gave them to the stenographer a few moment ago, but I will repeat them if I have them. According to the figures which I have which were computed by my secretary, and I think correctly, October, 1901, October, 1902 ———

Q. Just wait a moment. Let us look at October, 1901. Will you look at your account and see the amount of interest you are charged there? A. Well, I think I know what the amount is; I think it is \$53.69.

Q. That is correct, \$53.69? A. Yes, sir.

Q. At what rate do you figure that? A. Well, I figure that that is at the rate of eight per cent interest.

Q. Now, if you will look at your account, Senator? A. Yes, sir.

Q. Under the date of September 30th, you have a copy of it in your hand, have you not? A. Yes, sir.

Q. Under the date of September 30th, 1901, your balance was \$2,867.41? A. What is the date, please, again?

Q. September 30th, 1901? A. September, \$2,867.41, yes, sir.

Q. Now, the interest on that computed for thirty-one days at six per cent we make \$14.82, making the charges for the 500 Sugar, 100 Erie and 100 Louisville & Nashville, the interest figured on that at 6 per cent, we make \$51.92. That is as it appears here in the account. On the 100 New York Central, \$18.24; on the 100 Atchison, which was on the 10th, \$5.08? A. Where are you reading from?

Q. I am reading right down through October, after September 30th? A. Just a moment; that is 1901?

Q. Yes. A. Just wait a moment until I catch where you are; that is October 31st; that would be the September account. I do not find there were any purchases in September, Governor.

Q. It was the stocks in October; I am beginning with September 30th, to run to October 31st, when the interest charge was made, September 30th, down to October 31st? A. You are reading the October account; here it is.

Q. I am reading down these accounts? A. Yes, sir.

Q. A charge is also made on the withdrawal of \$5,000 cash of \$1.66; on the 100 Missouri Pacific and 100 Paul, purchased on the 30th, \$4.44, all of which should figure at six per cent and make in the aggregate \$96.16. Now, figuring your credits on the other side of the ledger make a reduction of \$42.47, leaving a balance of \$53.69 if figured at six per cent according to our computation. A. I have given you my view about it, and I am still inclined to think that I am correct.

Q. Those computations will give you an opportunity of checking up and seeing if we are not correct? A. Yes, sir; I will give you the details of the methods of the computation if you wish, but I may state to you the method pursued is similar to your own, that is, if a stock was purchased during the month that the interest was computed from the date of its purchase, and if a credit was made during the month that interest was computed upon the credit from the time the credit was made until the close of the month.

Q. The full number of days? A. The full number of days, yes, sir. I may say, in this connection, you will observe from the account that it was not only charged at the rate of six per cent, but it was compounded monthly right along, and I take that into consideration every time I make a computation.

Q. Our computation shows that only in one month, to wit, in September, 1902, did they charge you in excess of six per cent, and that month you were charged at the rate of 10 per cent? A. I have given you the method; there are only three months according to my computation.

Q. And what are those three? A. The month where the charge is under date of October 31st; I presume that would be for October.

Q. What year? A. 1901.

Q. Yes. A. The charge according to my computation is 8 per cent, the charge being \$53.69, whereas it should be \$39.30, leaving an overcharge of \$14.39, or eight per cent.

Q. Well, if you will have your secretary go over the items as we have given them it will give us an opportunity at a later hearing to check up to see which is correct? A. I should be very much pleased to do it. Now, the next one was in the month of October, under date of October 1st, that being for the month of September, I take it, 1902.

Q. What was your rate there? A. The charge was \$869.62.

Q. Which would be at what rate? A. At the rate of ten per cent.

Q. That it correct, that is the way we figure it? A. An overcharge of \$347.73, even if the rate of six per cent had stood.

Q. That agrees with our computation? A. But it did not stand because it was reduced to four.

Q. Now, what other month? A. The month of July 30th; that would be the month of July, 1903; the charge is \$541.49, whereas according to my computation it should be \$520.35, or an overcharge of \$21.14, but I presume that is a mistake, intended to be charged at the rate of six per cent.

Q. In accordance with our computation that makes it come out at six per cent? A. Now, in August, one more charge, August 31st, 1903, that would be, I take it, for the month of

August, 1903; the charge is \$681.08, whereas the rate of six per cent would be \$518.12 or \$162.96, over six per cent rate, or at the rate of eight per cent.

Q. That does not agree with our computation as I stated before; the computations which we have made show that the account was carried at six per cent except in the one month of September, 1902? A. If it is convenient, Governor, I would like to have your figures on that month, because I do not think we have made any mistake.

Q. We will furnish them later. A. I presume so.

Q. Now, then, to go back to this conversation which you had with Mr. Cunningham of Ellingwood & Cunningham, in which he stated that they had credited your account with \$500; were you satisfied with that credit? A. I certainly was not.

Q. Well, did you note that after that they continued to charge you six per cent, or as your computation goes, in some months in excess of six per cent? A. I noticed from time to time that the rate of interest had not materially changed.

Q. What did you do? A. I continued to protest.

Q. In writing? A. Nothing further that I can find except the communications which I have read. I may say that I saw them frequently.

Q. What was said between you and Mr. Cunningham, or you and Mr. Rogers, in regard to this? A. Well, I have repeated the conversation; the substance was that the rate of interest was too high; that I could not afford to carry the account, and if it was persisted in that I would be obliged to close it.

Q. At the close of the account there was a rebate made of \$5,000 on interest, was there not? A. There was.

Q. And that was really a rebate of two per cent on the entire account, was it not? A. It is substantially along those lines.

Q. Which made the rate at which your account had been carried, four per cent, did it not? A. Well, no, it did not; that alone would not do it, no.

Q. Our computation if correctly made shows that this rebate of \$5,000 would make the interest on your account during that time, at four per cent, \$5,079.67; that was the amount of the rebate, was it not, if you just look at your account at the close?

A. Well, I can only look at your account, Governor; I am not vouching for the correctness of this account.

Q. I say, as it appears upon this book it was \$5,079.67 which you were credited with, the rebate? A. If your account shows that.

Q. Just at the close of the account: "Rebate, interest, \$5,079.67." Do you note that entry? A. I note the entry, yes, sir.

Q. Our computation if correctly made, and we think it is, shows that that would be an exact rebate of two per cent on the entire account, not including the \$500, and that it would make the account carried from the beginning to the end at four per cent. A. My account does not agree with that statement.

Q. I have given you the method by which we computed it one month, and you have given me your method and your computation for various months, which will give us an opportunity to go over our computation and see whether it is correct, and will give you an opportunity to go over ours. A. There may have been, I don't know, from month to month, some slight mistakes, but from the whole account, figuring it as near as I can, that does not substantially agree with my conclusions.

Q. Were you a candidate for election for office in 1900, Senator? A. I was, sir.

Q. Do you recall receiving a contribution from G. Tracy Rogers in that campaign? A. I do not recall it except that my attention has been called to the fact that some contribution was made.

Q. It appears in the evidence here that a letter passed from Ellingwood & Cunningham to you stating that they forwarded \$500 to you to be used for the Republican cause in your county in that campaign "From our mutual friend at Binghamton." Did you know to whom that referred? A. I presume I did. I think that that contribution was sent — in fact, I have a copy of my letter here acknowledging it, under date November 2nd, 1900: "Messrs. Ellingwood & Cunningham, 41 Wall street, New York city, N. Y. Gentlemen: Your esteemed favor of recent date is duly received and contents noted. Permit me to thank you and our mutual friend for your kindness. Yours very truly." I pre-

sume that was the check to which you refer. That was a campaign contribution received and accepted for that purpose.

Q. Is that the only campaign contribution you ever received from Mr. Rogers? A. That is the only one I ever received, I presume in relation to that, I am not saying that that came from Mr. Rogers. I judge from the communication that that check came from Ellingwood & Cunningham; I find their letter; I may say that I found their letter, and my only recollection is as refreshed by this copy of a letter which I have, but I think that the check was a check from Ellingwood & Cunningham, but I may say here, Governor, that I make no point about that matter. I haven't any doubt but that I received \$500 from Ellingwood & Cunningham or Rogers at that time for campaign purposes, as I did from others, and it was expended for that purpose.

Q. Did you know any reason why Mr. Rogers was contributing to your campaign fund at that time? A. There was no reason under heavens. It was done entirely unsolicited and without my knowledge; but I may say, I am very free to confess, that there are people who are charged with running campaigns and providing funds to do it with who don't know very much about — there is no tainted money for that purpose.

Q. What do you mean by "tainted money?" A. I mean that the sources from which we receive the cash is not questioned.

Q. That the managers of campaigns are in the habit of taking it from whatever source it comes? A. Any source, wherever it comes.

Q. Making no inquiries? A. No inquiries whatever.

Q. And not caring? A. You are as good a judge of that as I am.

Q. I never received any myself because I never managed any campaign. A. Some receive and others secure.

Q. I never received or secured, Senator, so I have no way of refreshing your recollection. I show you, however, a letter to which I have referred, reading: "November 1st, 1900. Hon. George R. Malby, Ogdensburg, New York. Dear Sir: Enclosed please find our check"—I did not wish you to understand me to say that the check was Rogers; it was the check of Ellingwood & Cunningham—"Please find enclosed our check for \$500

which we send at the request of our mutual friend at Binghamton to help the Republican cause in your county." A. Yes, sir.

Q. Now, you have not any doubt but that the "mutual friend" referred to there was Mr. Rogers? A. I am not going to deny anything about that whatever. When I receive a political contribution it is received and expended for the purposes for which it is intended.

JOHN R. YALE, called as a witness and duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. What is your business, Mr. Yale? A. Contractor.

Q. Where do you reside? A. Brewster, New York.

Q. Do you hold any public office? A. I do.

Q. What? A. Member of the Assembly.

Q. And how long have you been a member of the Assembly? A. Nine years.

Q. When did your service first begin? A. 1902.

Q. And has extended to the present time continuously? A. It has.

In 1902 upon what committees did you serve in the Assembly? A. I think on the Railroad Committee, and the Committee on Labor I think.

Q. Were you at that time acquainted with Mr. G. Tracy Rogers? A. I was.

Q. And how long have you known him? A. Probably for four years.

Q. Did you know at that time that he was president of the Street Railway Association of the State of New York? A. I know that he was President of the Street Railway Association, but I have no recollection now that I knew it then, but I presume I did.

Q. Do you know that he was frequently at Albany in the interests of the association connected with legislation? A. He was there quite frequently.

Q. And frequently came before your committee? A. Well, I would not say frequently. I think he was there several times.

Q. Did you see him frequently about the corridors of the Capitol and in the corridors of the hotels? A. I saw him there, yes.

Q. Were you then acquainted with the firm of Ellingwood & Cunningham, Brokers, in Wall Street? A. No, sir.

Q. Did you know at that time that Mr. G. Tracy Rogers was a special partner of that firm? A. I did not.

Q. Did you ever have any dealings with that firm? A. I never had.

Q. It appears from the account of Mr. G. Tracy Rogers which has been placed in evidence here, that on May 16, 1902, he drew through Ellingwood & Cunningham and forwarded to you a check for \$500. I wish to give you an opportunity if you wish to explain the transaction. A. I have no recollection whatever of the check — from Ellingwood & Cunningham to me?

Q. Yes. A. Can I see the check, please.

Q. Unfortunately their vouchers, 40,000 of them, are missing. I'll show you the stub of the check which appears in that check book. By reason of the loss of these vouchers I am unable to show you the voucher. Check A-557, May 16, 1902, J. R. Yale, account of G. Tracy Rogers, \$500. A. I have no recollection of it.

Q. Mr. Rogers testified that his recollection was that he had forwarded the \$500 to you. A. Perhaps he did.

Q. And he termed it a political contribution. A. I have no recollection of any political contribution from Mr. Rogers.

Q. Or he said a belated political contribution or a loan. A. It may have been a loan, money that he owed me.

Q. Did he from time to time owe you money? A. I would not say from time to time, but he has at different times in matters not connected with legislation whatever, and I have owed Mr. Rogers money at different times.

Q. Did you and Mr. Rogers have business relations? A. Yes, sir.

Q. Of what nature? A. Of a private nature, nothing to do with legislation whatever.

Q. Won't you tell the committee what the general nature of the transaction was? A. I would prefer not to, sir.

Q. Well, the committee would like to know. In view of the wish of the committee to know won't you state? A. I should not care to. Mr. Rogers and I have had business transactions that were of a private nature that had nothing to do whatever with any legislation.

Q. Well now, Mr. Yale, were these relations with Mr. Rogers strictly business relations or was it business relations and — and social relations? A. And social, yes sir.

Q. Now tell us frankly what it was. A. I don't care to. It was of a private nature and it had nothing to do with any affairs of public nature.

Q. Was it the result of any wager? A. Perhaps it might have been in some cases.

Q. Resulting from games of chance and play? A. Yes, sir.

Q. Now tell me frankly whether or not this payment of \$500, if you have any present recollection of it at all, had to do with those relations? A. I have no recollection of that check whatever, Governor.

Q. None whatever? A. No, sir, none whatever.

Q. Now as it was made in the month of May, 1902, it could not have been a political contribution at that time of the year, could it? A. Not necessarily; no, sir. Just a moment, excuse me. I don't know what time of the year I was nominated. I have been usually nominated early in the spring, but I have no recollection of that year.

Q. Now did Mr. Rogers ever make a political contribution to your campaign fund? A. Not to my recollection.

Q. Then your best recollection is that this was not a political contribution? A. I should say not, but I have no recollection.

JOTHAM P. ALLDS, called as a witness and duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Allds? A. Norwich, Chenango county, New York.

Q. What is your business? A. Lawyer.

Q. Your offices are at Norwich? A. Yes, sir.

Q. Do you hold at present any public office? A. I do not.

Q. You have held public office, have you not? A. I have.

Q. Give me the history of your holding of public office. A. I entered the Assembly in January of 1896, and continued there for seven years. I then went to the Senate and continued there until last March.

Q. Were you leader in the Assembly during certain years? A. I was leader for four years.

Q. Just name the years, please. A. 1899, 1900, 1901, 1902.

Q. And while you were leader that gave you a position on the Committee on Rules, did it not? A. I was appointed on the Committee on Rules by the Speaker.

Q. Does the position of Chairman of the Committee on Ways and Means carry with it membership in the Committee on Rules? A. It does not.

Q. The appointment is made by the Speaker, is it? A. It is, it is his committee.

Q. Now you were a member of the Committee on Rules by appointment of the Speaker during 1900, 1901 and 1902? A. Yes, sir.

Q. And you were on the Committee on Finance in the Senate in 1903, 1904, 1905, 1906, 1907, 1908 and 1909? A. Yes, sir.

Q. And chairman of the committee? A. Chairman of the committee a year ago, sir.

Q. Now do you know G. Tracy Rogers? A. I do.

Q. How long have you known him? A. Why, I can't tell you. I think I must have known Mr. Rogers even before I entered public life, because he lives in the city of Binghamton, and is an active business man, and naturally in the course of business I must have met him, I should say before then.

Q. Well, you have known him quite well for a great many years? A. In a general way, the same as I know you.

Q. Did you know he was president of the Street Railway Association of the State of New York from 1893-94 down to 1903? A. No, I don't know when he was elected, and I don't know at what time I learned that he was the president, but I have had general knowledge that he was president during some of those years which you gave me.

Q. Did you know that he was president of the association in the years 1900, 1901 and 1902? A. Now I could not swear definitely as to whether I knew it then or not. I should assume that if he was I did know it, but I didn't know what years he was treasurer.

Q. He was frequently in Albany during those years, was he not, in connection with legislation affecting surface railways?

A. From time to time I have seen Mr. Rogers in Albany for a great many years.

Q. Well, he testified that during the time he was president of the association, among his other duties was the duty of looking after legislation affecting the members of the association. With that in mind would that refresh your recollection that during the years that he was president of the association, which included the years 1900, 1901, 1902, that he was frequently in Albany looking after legislation affecting the street surface roads? A. Well, I know that I have seen him frequently in Albany during those times.

Q. Do you know J. T. Cunningham? A. Yes, sir.

Q. How long have you known him? A. That I can't tell you, but somewhere — why, it was the last part of the nineties, I can't tell you just when.

Q. Under what circumstances did you become acquainted with him? A. Well, now Mr. T. D. Miller, who is the president of our bank in Norwich, was accustomed to do business through Ellingwood & Cunningham, and I am a director in that bank, and I met Mr. Miller at their office, and whether Mr. Miller introduced me to Mr. Cunningham, or whether it was Mr. Hugh Hastings, then State Historian, who introduced me to him some time at the Albany Club — I know it was one of those, but it is so many years ago I can't tell you which man it was.

Q. Did you know of the firm that he was connected with, Ellingwood & Cunningham, brokers in Wall street? A. Yes, sir.

Q. Did you ever have an account with that firm? A. No, sir.

Q. Did you ever have any transactions with them? A. Yes, sir.

Q. Do you remember what years those transactions were? I

show you a copy of your account for the purpose of refreshing your recollection. A. 1901 I guess, Judge (witness examines account).

Q. Can you tell me when those transactions took place? A. From the entry there it would appear that it was the 4th day of June that I left the stock there for sale.

Q. Well, now, you will note that the only entries upon your account are as follows, appearing from the books of Ellingwood & Cunningham: 1901, June 4, 100 Transportation; 1901, October 21, 100 Transportation delivered — \$1,400; October 25, cash \$400; December 10, cash \$500; December 30, cash, \$506.80. A charge of interest on December 31st, 1901, of \$6.80, balancing the account at \$1,406.80. Do you notice that? A. Yes, sir.

Q. Now, this account opens, therefore, with a deposit of 100 Transportation, does it not? A. It does.

Q. From what source did you obtain this Transportation stock? A. Well, now, Judge, I have not refreshed my recollection, but this matter has been all gone over, and the record of the brokerage firm shows what it was, but it was all in the Senate investigation. It was bought through Colonel Price of Brooklyn.

Q. And under what circumstances was it bought? A. Why, simply that I had a desire to purchase 100 shares of Transportation, and an order was given to Colonel Price, and was executed. I sent to him my check; I think from the evidence there that it was sent in two instalments; I think I paid \$500 the day I gave him the order, and paid the balance as soon as the stock was purchased, or shortly afterwards, and took up the certificate.

Q. Colonel Price was not a broker, was he? A. I really couldn't tell you, sir.

Q. Was he connected with any brokerage firm? A. Not to my knowledge.

Q. He was a member of the Assembly at that time, was he not? A. No, sir.

Q. He was not? A. No; it is the father of Assemblyman Frank Price. Frank and I roomed in the same house, and so it was bought through Frank, and he had the order executed through his father.

Q. Well, now, will you tell me why you purchased this stock

of Colonel Price rather than purchasing it in the open market? A. Why, it was purchased in the open market, except I going home, and Price moved to New York—Frank Price—we were fellow Assemblymen, he executed the order and his father did the business. That's all.

Q. Now, was not this stock purchased through Mr. Nixon, who was then Speaker of the Assembly? A. No, sir.

Q. It was not? A. No, sir.

Q. Mr. Nixon and you and Mr. Price lived in the same house at that time, did you not? A. We did.

Q. Referring to page 1459 of the proceedings of the Senate in the matter of the investigation demanded by Senator Jotham P. Allds, you testified, did you not, as follows: "Q. What was the name of the gentlemen in this house—that is, the House of Commons? A. Yes, sir. We lived that year over on the other side of the park, next the church. Q. Now, what was the name of the gentleman who made that purchase? A. I could not tell you whether it was Mr. Price or whether it was Mr. Gilman. It was some one of the gentlemen that were going down at the end of the week. Q. What is Mr. Gilman's full name? A. Theodore P. Gilman. Q. Where did he live? A. New York city. Q. What is the name of the other gentleman? A. Mr. Frank Price. Q. Where did he live? A. I suppose he still lives in Brooklyn. He was an Assemblyman at that time, from Brooklyn. Q. Now, they bought a block—by a block I mean a quantity of that stock, did they, the members of the House of Commons? A. I, not seeing that—it must have been either of those two gentlemen. It might have been Mr. Fallows, who also lived there. Q. Who is Mr. Fallows? A. Edward N. Fallows, of New York city, then an Assemblyman. Q. Assemblyman Fallows? A. Yes, sir. Q. Anybody else might have bought it? A. It would be my recollection that some of the men that lived in New York. It might have been that Mr. Speaker Nixon was going down that week, but I don't think so." Now, does that refresh your recollection as to whether or not it might have been Mr. Nixon that purchased the stock, rather than Mr. Price? A. It simply shows, Judge, that you have not examined all the testimony given. I had no recollection on Thursday afternoon, when that was asked of me,

and I asked the courtesy, because I could not place it definitely, of being examined on that subject at the next meeting of the Committee, and on the next hearing of the Committee you will find that I swore definitely as to when it was purchased; produced the memorandum, the checks and the accounts from Colonel Price. It is all in there.

Q. Well, now, you say that you received information that the purchase of Transportation would be a profitable purchase? A. Why, it was mentioned that that stock was a good stock to buy.

Q. Who made that suggestion? A. Oh, it must have been a conversation between Price and myself.

Q. You thought a conversation in which Mr. Nixon was present? A. Why, it is ten years ago, Judge. I could not remember for the life of me. I don't think so.

Q. Well, was the reason assigned why it was a good stock to buy? A. Yes, sir, the reason was assigned.

Q. What was the reason? A. That it was a Jersey corporation which had been organized as a holding company, to take up and possess the patents which would solve the question of the application of electricity to the street railway systems of the entire United States.

Q. Now, what was the date, as near as you can give it, of this purchase? A. You would have to refresh my recollection by the Price letter there.

Q. Could you tell me what year it was? A. Oh, it was purchased in the year 1900.

Q. And what time of the year? A. Oh, some time along in the winter or spring, somewhere.

Q. Well, if it was purchased in the winter or spring, can you give me the month? A. No, Judge, I can supply the months. Well, I have to answer you.

Q. Was it before or after the adjournment of the Legislature in 1900? A. Why, it would be my impression that it was before.

Q. Before? A. I don't know.

Q. Now, it appears from the evidence here that on the 16th day of March, 1900, Senator Goodsell introduced in the Senate a bill enlarging the franchise of this corporation. That bill passed the Senate thirteen days later, on the 29th of March, read over

to the Assembly, was immediately reported out by the Committee on Rules, and passed the Assembly on the 5th, the day before adjournment. Now, does that refresh your recollection with reference to the information which you had received that this would be a good stock to buy? A. Judge, that method of statement, that would not refresh it at all, because that the first thing is wrong. I don't know anything about the history of the proposed bill, but I never understood that there was any bill that had anything to do with enlarging the powers of the New York Transportation Company at all.

Q. You never had heard of that bill? A. No, sir.

Q. Well, did you hear of this bill that Senator Goodsell introduced on the 16th of March, 1900? A. Have you got the bill?

Q. No. Did you hear of any bill that he introduced at that time, enlarging the franchise of certain corporations which were operating cabs, electric cabs, and had operated them for a given number of years in cities of the first class? A. Why, I know that Senator Goodsell at some time, some year, introduced a bill enlarging the powers of what was known as the Fifth Avenue Stage Company, I think.

Q. You recall that bill, do you? A. I recall we had had such a bill; yes, sir.

Q. Do you recall that he introduced it in 1900? A. Well, the Assembly Journal will show. I suppose it was. I can't tell.

Q. Well, going back again to my statement. On March 6th, 1900, Senator Goodsell introduced such a bill; it passed the Senate on the 29th, went over to the Assembly, was immediately reported out by the Committee on Rules and passed the Assembly on the 5th, the day before adjournment. Now, does that refresh your recollection in regard to any information you may have received in regard to this being a good stock to purchase? A. This stock?

Q. Yes, sir? A. No, sir.

Q. You knew then at the time, did you, of the passage of this bill to which I have now referred? A. I knew nothing of its provisions at that time, Judge, I think. You see, at that time the Speaker was poorly, and the amount of work just before adjournment resting on the leader was such that you could not analyze

every bill that went through. You had to rely on whatever committee it came from.

Q. Well, this did not come from any committee, except the Committee on Rules? A. Yes, but it being a railroad bill, as you state, of course the Speaker would consult with the chairman of the Railroad Committee, because the method, financed bills were referred to me, because I was chairman of Ways and Means, judiciary bills to the chairman of the Judiciary, railroad bills to the chairman of the Railroads Committee, and so on; the Speaker, you know, had general information as to the character of the legislation.

Q. It being moved in the Committee on Rules by Mr. Bedell, who was then chairman of the Committee on Railroads? A. Yes, sir.

Q. Does that refresh your recollection in regard to it? A. Not the slightest, because if Mr. Bedell and Mr. Nixon agreed that it was a proper bill to be reported to the Legislature, it would be reported, of course, by the Rules Committee.

Q. Well, when it came up for passage, Mr. Fitzgerald, a member of the Assembly from New York, moved to reconsider the vote by which the bill was passed, and there was twenty-five votes cast in favor of a reconsideration of the bill. Does that refresh your recollection? A. Oh, no. Motions to reconsider were made so frequently in the closing days, personal fights about bills, that it would not attract your attention.

Q. This bill had never before been on the calendar of the Assembly, had just come over from the Senate, and this was its first appearance on the calendar, and this protest of Mr. Fitzgerald was thus early recorded or registered. Do you remember the protest? A. I have no personal recollection of it now.

Q. You are recorded in the affirmative, in favor of the passage of the bill, and in the negative on the motion to reconsider the vote by which it was passed. Does that refresh your recollection? A. No, sir, except it had been to sustain the Rules Committee. Of course, my vote on the floor would be to sustain the Rules Committee each time.

Q. It appears in evidence in the record of the Senate investigation, at page 1491, that your purchase of stock was made on

April 9th, 1900? A. Yes. Then that shows that it was after the passage of the bill.

Q. And while the bill was pending, before it became a thirty-day bill — the Legislature adjourned on the 6th of April that year. A. Oh, was it before Roosevelt? At that time it must have been; yes.

Q. The bill having passed on the last day before the adjournment of the Legislature, would become a thirty-day bill, would it not? A. Yes, sir.

Q. How much did you pay for this stock? A. It is all there.

Q. Well, tell me now. A. Oh, I can't. That is ten years ago. The check would show.

Q. Well, it appears from the evidence here on page 1491, that you paid \$1,230.70. Does that refresh your recollection? A. If you let me see it, so I know that it is a copy of the Price letter, or Price statement, I would know.

(Witness is shown evidence.) A. (Continued.) Yes, sir, that is an accurate statement, because I testified at that time with the letter of Colonel Price in my hand.

Q. Why did you leave this stock with Ellingwood & Cunningham on June 4th, 1901? A. It had been noted in the papers that a third assessment — this was assessable stock, two assessments paid up — was to be levied. The time came when a man had to decide whether he was going to put in more money or whether it was time to sell, and considering the conditions of the market, and that I was leaving for Europe on the 5th — and so when I came back on the 4th, as shown in the evidence here, I went to Mr. Colgate's office, who was the gentleman through whom I was accustomed to either buy or sell stock, and he being out of town, I was hustling to close up business that day, because I was going to sail the next. I went to the next nearest place where I had an acquaintance, and that happened to be Ellingwood & Cunningham's place.

Q. What happened when you went there? A. I simply delivered the 100 shares of stock, and told them I wanted it sold.

Q. Now, was this delivery made on June 4th? A. On the morning of June 4th.

Q. At what price did you tell them to sell it? A. I gave them full liberty of action with reference to it.

Q. Do you recall in May of that year, what its price was in the open market? A. I do not. That is ten years ago.

Q. Do you recall that it was about four? A. No, I have no recollection now on the subject.

Q. Did you learn shortly after, it was four in June, that it went down to a little over one? A. No, I don't know that to be a fact.

Q. You gave them an open order to sell, did you? A. I did.

Q. Was it sold? A. It was.

Q. When? A. I don't know.

Q. When did you learn that it was sold? A. I received a letter some time along about, when I got back — oh, some time in September or October, I guess, stating that it had been sold, and that there stood to my credit, I think, \$1,400, as the result of the sale.

Q. Were you surprised to receive the notice of sale at that price? A. No, sir.

Q. Well, you undoubtedly knew when you deposited it what it was selling at, did you not? A. No, I paid no attention to that, because I was willing to take whatever loss there was, or whatever might be the result, because I did not want, with a contemplated trip to Europe, to go to work and to pay another thousand dollars which was impending on an assessment.

Q. You knew that it had to be sold at a loss then, did you? A. I didn't know what would be the result.

Q. I know, but you knew if it was sold at the time you deposited it, it would have to be sold at a loss? A. I would assume, if it was sold at that time, it would be sold at a loss, because you can't bear the market by levying an assessment and not having the stock to go down.

Q. Well, knowing as you undoubtedly did, that it was quoted at four at that time, coming back in October and receiving notice that it had been sold at fourteen, were you not surprised or gratified at the price received? A. I was pleased to see the transaction was handled successfully.

Q. Have you the correspondence you had with Ellingwood & Cunningham? A. No, I never had any correspondence with them. I received a notice from them, I think.

Q. The notice of sale. Well, have you that letter? A. No, sir.

Q. What else did they say in the letter? A. Why, I have no recollection about it at all, sir.

Q. I show you a copy of a letter in their letter book, under the date of October 21, 1901: "Mr. J. P. Allds, Norwich, New York. Dear Sir: We beg to advise you that we have passed to the credit of your account this day \$1,400, being amount received from Hon. Louis F. Goodsell. You will understand the credit. Yours truly, Ellingwood & Cunningham." Does that refresh your recollection as to the communication received? A. I assume that that must be the letter that they wrote me.

Q. What does it mean by "You will understand the credit?" A. I have not the slightest idea of what was in the writer's — was it Cunningham — in his mind when he wrote that letter, any more than you can tell what this means here, when it says on their books that delivery was made on October 21st, when there was no such thing. It was made on the 4th day of June. That is inaccurate on its face, right there. I don't know what they had done in juggling this thing, myself.

Q. There has been no juggling, as the evidence shows. The delivery — you will notice the deposit on your part was on June 4th? A. That's right.

Q. Was it not? A. Yes, sir.

Q. The actual delivery, actual payment from Goodsell October 21st? A. You mean, then, their delivery of the stock to somebody else?

Q. Yes. A. Oh, I beg your pardon, sir.

Q. Now, going to this letter again, "We beg to advise you that we have passed to the credit of your account this day \$1,400, the amount received from Louis F. Goodsell." Did that surprise you? A. Why, I have no knowledge whatsoever of what was meant by any such statement, and it is the first time that it has come to my mind since I received a letter notifying me they had sold.

Q. There is nothing in this letter that notifies you they have sold. You simply received the letter on the 21st, stating "We beg to advise you that we have passed to the credit of your ac-

count this day \$1,400, being amount received from Hon. Louis F. Goodsell." Did he owe you anything at that time? A. He did not.

Q. And if he did, he would not be paying it through Ellingwood & Cunningham? A. He didn't owe me anything, I said, Judge.

Q. Were not you surprised, then, to learn from them on your return from Europe that he had paid \$1,400 into their firm to your credit? A. No, sir. The only thing with that first is, I never had any transaction with him except the leaving of that stock for sale. That seems to be Mr. Cunningham's method of advising me that he sold it. Whether he told me to whom he sold it, I don't know.

Q. He does not say anything about the sale of the stock? A. He says "I will understand the credit."

Q. What did that mean? A. It meant there that that stock had been sold. No man could understand it any other way. That is the only occasion I would have for a credit from Ellingwood & Cunningham, would be a receipt for whatever they secured from that 100 shares of stock.

Q. Then you understood from that that they had sold the stock to Louis F. Goodsell? A. I understood simply that the stock account had been closed out, and that that amount stood to my credit.

Q. You understood it had been sold to whom? A. I had no knowledge to whom they sold it.

Q. If they said they received the credit from Louis F. Goodsell, did that convey to your mind that the sale had been made to him? A. That would not convey any impression to me, because I did not know how Ellingwood & Cunningham managed it.

Q. Managed what? A. The transaction of selling the stock.

Q. Did you ever inquire? A. I did not.

Q. Well, when did you next see them? Did you ever see them after that? A. Why, I think the next time that I saw Mr. Cunningham was when, after his failure, he was having an interview with Hastings about a large account, where Hastings had lost an amount of money through Ellingwood & Cunningham. I don't think I saw him from that time on.

Q. The next time you saw Senator Goodsell did you inquire of him about the transaction? A. I never had occasion to inquire of Senator Goodsell.

Q. You know they state there that Senator Goodsell had placed \$1,400 to the credit of your account. Now, the next time you saw the Senator, did not you inquire of him about it? A. I don't think I ever did, no, sir.

Q. Well, is that not strange? A. Well, I don't see anything strange about it, sir.

Q. Having received notice that he had paid \$1,400 into the firm of Ellingwood & Cunningham for your account, would not that naturally excite your curiosity, and the next time you saw him you would say, Senator, I received notice last October from Ellingwood & Cunningham that you paid \$1,400 into my account? Did you ask him about it? A. Why, there would be no occasion. I might have said something, but I don't think I ever had any conversation with Goodsell on the whole subject.

Q. Well, now, did you at that time, when you received this notice, or shortly afterwards, know that Senator Goodsell had taken up from Ellingwood & Cunningham 1,400 shares of this stock of the New York Transportation? A. No, sir.

Q. When did you first learn that? A. When you, having some newspaper report of one of the hearings here, before the Committee.

Q. Never heard of it before that time? A. No, sir.

Q. Had no knowledge whatever of it? A. No, sir.

Q. Now, after you received this letter from Ellingwood & Cunningham, notifying you of this deposit, did you communicate with them? A. I could not tell you whether I did, or whether I called at the office, I am sure.

Q. Well, if you called at the office, or if you wrote them, what did you say? A. I have no recollection whatsoever, because it is so many years ago, except simply as my deposit slips show the time that I drew out the balance that I had there. That is the only recollection I have got with reference to the whole transaction, at this late period.

Q. Did you ever have any information of them in regard to this sale, other than what is contained in this letter, do you recall? A. Not that I have any recollection of, no, sir.

Q. I show you a letter: "Norwich, New York, October 24,

1901. Ellingwood & Cunningham, 41-43 Wall Street, New York City. Gentlemen: I am in receipt of your favor of October 21, apprising me that there is deposited to my credit \$1,400, in full of certificate of 100 Shares New York Transportation, which I left with you in June of this year, and for which you gave me your receipt. I am very much indebted to you for your kindness in the matter. I have this day drawn on you through the National Bank of Norwich for \$400, and shall be pleased to leave the even thousand with you until I determine whether I prefer to invest it, or, if the market ever becomes attractive, use it later. Yours truly. J. P. Allds." A. Yes, that is my signature

Q. What does the kindness refer to there? A. Handling the transaction in such a way that it netted me a very slight profit, if you don't charge up the years' loss of interest.

Q. Well, you paid your commission as brokerage? A. The account shows.

Q. Does it show. Will you look at it, please? Does it show any commission, as brokerage? A. There does not seem to be any charge entered there.

Q. Well, then, it was pure kindness, wasn't it? Was not that what you referred to, that they had not charged you any commission? A. No, I don't think so.

Q. Well, how was it, that they were taking this stock of you in the spring, disposing of it so advantageously to you, when you thought there was going to be a loss, getting 14 for it when at the time that the bargain was made, as testified to by Senator Goodsell, the stock was selling at 4 in the open market. How was it that they did not charge you any brokerage commission? A. I could not answer that, no, sir.

Q. Then was not that the kindness to which you referred? A. I cannot speculate as to what was in my mind ten years ago, when that letter was written.

JAMES T. ROGERS, called as a witness, being duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Rogers? A. Binghamton, New York.

Q. And what is your occupation? A. Lawyer.

Q. Do you hold any public office at present? A. Not of consequence.

Q. Did you formerly hold public office of consequence? A. I was a Member of the Assembly.

Q. In that statement, do you intend to make a distinction by that statement? A. No. The thought I had in mind when you asked me the first question was, that the Court of Appeals had declared that a notary public is a public officer, and I happen to be a notary public now.

Q. How long were you a member of the Legislature, Mr. Rogers? A. From January 1st, 1899, until December 31st, 1907.

Q. And on what committee did you serve, if you can recall, when you were in the Legislature? A. Oh, a great many.

Q. Were you a member of the Committee on Railroads? A. Yes.

Q. And during what year? A. The first two years.

Q. That would be during the years — A. 1899 and 1900.

Q. Did you know G. Tracy Rogers? A. Oh, yes, very well.

Q. He was a resident of your city? A. Yes, sir.

Q. And you had known him a great many years? A. Yes, sir.

Q. Did you know during the years you have mentioned, that he was president of the Street Railway Association of the State of New York? A. I knew that he was prominent in the ways of the Street Railway Association. I don't know that I knew his specific title, but substantially that.

Q. And did you know that he was frequently at Albany looking after legislation affecting members of the association? A. Yes. I qualify that by saying that I knew he was frequently at Albany, and I assume, more than otherwise, his purposes.

Q. Did he frequently appear before your committee? A. Sometimes.

Q. Who was chairman of the committee during those years? A. Of the Railroad Committee?

Q. Yes. A. Mr. Bedell.

Q. Did you hear my examination of Mr. Allds, who preceded you? A. Yes, sir.

Q. Do you recall the bill introduced by Senator Goodsell in

March, 1900, to which I referred, affecting the franchises of companies operating electric cabs or stages in cities of the first class?

A. I had no recollection whatever of the bill, until its recent discussion.

Q. The bill did not come before your committee in the Assembly? A. No, sir. Well, I can't even answer that from recollection, only from your statement of the facts.

Q. You have no recollection of it coming before it? A. No, sir.

Q. It did in fact go directly before the Committee on Rules? A. I predicate my answer on the statement I heard you make.

Q. Were you acquainted with the firm of Ellingwood & Cunningham? A. When?

Q. Say in 1900, 1901, and 1902? A. I became acquainted with the firm about that time.

Q. And how long did you have an account with them? A. Well, that question is too indefinite. I did subsequently, yes.

Q. And when was that account opened, do you recall? A. Well, the first account I ever had with them was with reference to the New York Transportation stock.

Q. Who introduced you to the firm? A. Oh, I assume that Mr. G. Tracy Rogers did.

Q. Did you know at that time that he was a special partner in the firm? A. Well, I knew when he became a special partner by the publicity that was given in the Binghamton newspapers and otherwise, but just as to the relation between this time and that I cannot give you.

Q. I show you one of the leaves of the loose-leaf ledger. You will note that your account consists of simply one transaction, in the nature of purchase, is not that correct? A. I have not had —

Q. In the opening, I mean at the opening of the account? A. That was the first transaction.

Q. Now, the first transaction was in April, 1900, was it not? A. It so states here.

Q. Well, does that accord with your recollection? A. Not entirely.

Q. And what is your recollection in regard to it? A. I should say that it was the day before.

Q. That it opened on the 18th? A. Yes, sir.

Q. Now, give me the facts in regard to the opening of the account as you recollect it, Mr. Rogers? A. This is my present recollection, which of course is subject to correction. I might say by way of preface that I have not seen Mr. G. Tracy Rogers, or communicated with him in any way for perhaps two months. I have been told since I came in here this morning that his testimony varies from my present recollection, but I am not seeking to dispute him, but to give you my best recollection.

Q. Will you give it to us? A. I was, as I recall it, here in New York city, attending the Republican State Convention, which was held about that time to elect delegates to the National Convention of that year. I had heard from various conversations, such as one might overhear sitting about the tables of hotels, that this was a good investment. I was very much of a novice in stock market affairs, and my recollection is that I asked Mr. Rogers — we were both here at the convention — that I asked him what he thought of it, or brought it to his attention, assuming the initiative myself. And the ~~net~~ result of it was that I directed him to purchase 100 shares and paid to him somewhere in the city \$500. Shall I continue?

Q. Yes, if you will. A. He told me to come to the office at some later time, that is, the same day, or it might have been the evening before, and on the 18th of April I did go to the office, and did receive a receipt from some one in the office.

Q. Referring now to the office of Ellingwood & Cunningham? A. The office of Ellingwood & Cunningham, yes, sir, and I understood that the purchase was made on that day.

Q. Do you have the receipt? A. I have.

Q. Will you produce it, please? A. Very glad to. (Witness produces paper and gives same to counsel.)

Q. This was handed to you in the office? A. That is my recollection, sir.

Judge BAUCK: I ask that this be marked as in evidence.

(Received in evidence and marked Exhibit 32.)

Q. Now to go back to the conversations which you had — A. Do you want to read this into the record?

Q. Yes, I will read it into the record so you can take it with you. A. Let me suggest the importance, in view of the fact that Mr. G. Tracy Rogers and I are fellow townsmen, and that two thirds of our names are the same, my middle name also being Tracy, and a great deal of confusion constantly arising in our home town, I have always laid stress upon the use of my first name.

(Receipt, Exhibit 32, read by Judge Bruce as follows:)

“ New York, April 18, 190 .

Received from Mr. James T. Rodgers, \$500 as margin.” And then \$500 in figures — “ Ellingwood & Cunningham, per H.” On the receipt blank of Ellingwood & Cunningham, 41-43 Wall street, New York city.

Q. Now, Mr. Rogers, going back to the conversation which you had prior to that time, in which it was suggested to you that this would be a good purchase, do you recall where that conversation took place? A. I have no specific recollection except that it was the general conversation that one would pick up around hotels and other places where men are apt to congregate.

Q. Did you obtain that information here in New York or in Albany? A. I should say I got it in both places.

Q. Did you know at that time that there was pending before the Executive for his action this bill which had been introduced in the Legislature by Senator Goodsell, which would to a very large extent enlarge the franchise of the New York Transportation Company? A. No, I didn't know that until a long time afterwards.

Q. And did any one state to you at the time that the passage of that bill, and its becoming a law, would operate to advance rapidly the price of this stock? A. I think not. I think that the general understanding I had as I now recall it, without going into specific details, was that there was to be some enlargement of the operations of this concern or some commercial expansion in some way, so that the stock was thought to be a good purchase.

Q. Did you know of the pendency of this bill at that time before the Executive? A. Not at that time, nor did I know at

the time it was signed, and it was several months afterwards, perhaps even longer.

Q. Now, Mr. Rogers testified that you requested him to purchase this 100 Transportation for you, that he did purchase it for you, and advanced \$500 margin; and you will note upon your account that this credit of \$500 in your account is on May 3, 1900, which is some two weeks after the purchase. Does that in any wise refresh your recollection in regard to the transaction?

A. You mean this item of credit?

Q. Yes. A. It does not, because it does not agree with my recollection.

Q. Your recollection is that you paid Mr. Rogers at the time? A. My recollection is that up town somewhere there, it vaguely comes to me, that it was at dinner or luncheon or some place of that kind, and it was in connection with the convention. Now I can't give you the date of the convention, but I assume it is a matter of record.

Q. What took place? Did you pay him the cash or did you give him a check? A. I should say I gave him the cash.

Q. If you gave him a check that check would appear among your vouchers, would it not? A. Yes, if I still have them.

Q. Have you preserved your vouchers as far back as that? A. I doubt it.

Q. Will you look among your vouchers and see if you have it, and see if it was by check, and if it was, send it to me. A. I will be glad to do so, but my present recollection is that I paid him here in New York. I might say that after receiving your telegram asking if I would come here and be a witness, I by chance found this receipt last evening, the first opportunity I had to look.

Q. Did you afterwards put up any further margin on this purchase? A. I did.

Q. When? A. I don't recall the date. Does it appear here?

Q. Well, examine your account and see if that in any wise refreshes your recollection. Do you recall having received any communication from Ellingwood & Cunningham asking you to put up further margins? A. Yes.

Q. Do you know when you received that? A. I can't give you the month now.

Q. Have you the communication? A. I have a communication which I also run across.

Q. Have you it with you? A. Yes.

Q. Will you let me see it, please? A. Very glad to. I don't think it agrees with this. I sent them a deposit in June.

Q. In response to a communication? A. I judge so, I presume so.

Q. (Showing paper to witness.) Is this the communication? A. No, this is the final communication.

Q. Prior to that? A. Let me precede this, if you will, with an explanation.

Q. Let me first, before we pass to that, show you a copy of a letter appearing in their letter book, dated May 10, 1900: "Hon. James T. Rodgers, New O'Neill Building, Binghamton, New York. Dear Sir: As Transportation is quoted nominally at 9"—you had purchased it at a little over 11, had you not? A. I think so.

Q. Eleven and a quarter, wasn't it? A. I don't remember.

Q. "As Transportation is quoted nominally at 9 you will kindly send us your check for \$300 so as to have your account with 5 per cent. margin. Yours truly, Ellingwood & Cunningham." Do you recall having received that communication? A. I have no doubt I did.

Q. And in response to that communication did you send them the \$300? A. Well, I must have sent them \$250.

Q. You say you must have sent them \$250—do you have any present recollection of it? A. No, except from this correspondence and these entries.

Q. Now, on July 5, as you have shown me, you received another letter from them, did you not? A. Yes, sir. It apparently was in answer to some complaint from me that I had not been credited with the \$250.

Q. Have you a copy of your communication to them? A. I don't know, I don't think so.

Q. The letter from them to you is as follows: "July 5, 1900. Hon. James T. Rodgers, New O'Neill Building, New York. Dear Sir: Your favor of the 3rd instant"—that would be of July 3rd—"received and contents carefully noted. You deposited the

margin on June 12th and it was entered in book correctly, but through clerical error was deposited in Mr. G. T. Rogers' account, the similarity of names causing the error, which we trust you will pardon. We herewith enclose your statement. Yours truly, Ellingwood & Cunningham." Now, that refreshes your recollection, does it, that you had on the 12th of June in response to their previous communication forwarded this margin? A. \$250; yes, sir.

Q. And in your account under date of July, if you will note, look at the original account, you will note from G. T. Rogers \$250? A. Yes, sir.

Q. That is the \$250 which had evidently by clerical error, as they state, been credited to his account? A. Yes, sir.

Q. Now how long did you carry this Transportation, Mr. Rogers? A. Well, I can't give you the dates — until it was closed.

Q. Well then, what became of it? A. It was sold by Ellingwood & Cunningham.

Q. Did you give directions for its sale? A. Not at that time.

Q. Well, when did you give directions, if any, for its sale? A. My recollection now — I — of course understand this is ten years old, and not very fresh, and maybe inaccurate, but it seems to me that some time in the summer of 1900, around about the time this additional margin was put up, that I told the firm or told Mr. Rogers, whom I saw often in Binghamton, that they might close this at 9, or around there, I can't give you the figure, but we will say 9 as an approximate figure, and that Mr. Rogers said he would attend to it. Now, I think this was a verbal conversation, and afterwards it touched that figure, and was forgotten or overlooked by him or by the office or by somebody.

Q. Well, did you keep note of the rise and fall in the value of the stock in the market? A. Only generally.

Q. Did you note when it touched nine? A. Well, my recollection is that at some subsequent time I — didn't I write them a letter to that effect — have you the letter that I wrote them?

Q. What letters do you refer to? A. It seems as though there had been some correspondence regarding it, I can't tell you for sure, but the net result of it was —

Q. Now, we have no letter from you, I will say frankly, we have no letter from you to them in regard to that matter. A. I saw by the newspapers that you had a great deal of correspondence here, and supposed you had it all.

Q. No, I think we have no communication or letter from you to them. A. I don't even know that I have a copy, but I should say that I did it by letter, and that I authorized them to sell, and it was not sold, and that Mr. Tracy Rogers, by way of extenuation or apology, said that he would take care of it for me at some later time, and did so. Now, I lost — I ceased to keep track of it after that time, and didn't pay much attention to it until it was sold.

Q. What became of it? A. It was sold.

Q. When? A. Well, whenever the — does it appear here (witness examines account)? Presumably in October, 1901.

Q. Did you ever have any conversation with Senator Goodsell in regard to this stock? A. Never.

Q. At any time? A. Not that I recall.

Q. Did you know that Senator Goodsell was endeavoring to accumulate, under an option which he has testified he had, a block of this stock? A. I did not.

Q. And did you ever know that? A. Not until what I have seen in the newspapers recently.

Q. Do you recall having received any notice from Ellingwood & Cunningham in regard to the sale of that stock? A. Yes, I received some notice from them.

Q. What did they say? A. Well, I should dislike to state, except that you read some letters here, which I should say was substantially like it.

Q. I show you copy of a letter which appears in that letter book, October 21st, 1901, "Mr. J. P. Rodgers, New O'Neill Building, Binghamton, New York. Dear Sir: We beg to advise you that we have passed to the credit of your account this day \$1,400, being amount received from Honorable Louis F. Goodsell. You will understand the credit. Yours truly, Ellingwood & Cunningham." Do you recall having received that communication? A. Substantially so, I presume the same letter.

Q. Did you understand it when you received it? A. I did not, except that my stock had been sold.

Q. Did you understand from that that the stock had been sold?
A. Yes, sure.

Q. What was there in the letter to advise you of the sale of the stock? A. Nothing except that that was the only transaction I had with Ellingwood & Cunningham at that time.

Q. Did it appear to you strange that if they had sold your stock they did not write you a formal business letter saying: "We advise you that your stock had been sold at 14, and \$1,400 placed to your credit." A. I don't think at that time that it appeared strange one way or the other.

Q. You had no business transactions whatever with Senator Goodsell? A. No, sir.

Q. He owed you nothing. Didn't that excite your curiosity, that Ellingwood & Cunningham should write you in that manner? A. I don't know whether I would characterize it as curiosity or gratification.

Q. You were gratified, of course, at the credit, but weren't you curious to know why they notified you of the credit in such a manner? A. I took it for granted it was a sale of that stock.

Q. Had you had any knowledge whatsoever of this option concerning which Senator Goodsell has testified that he had made in May of that year to acquire this stock, 1,400 shares of it, at 14, when the stock was selling in June in the open market at four? A. No, sir.

Q. Now, did you write Ellingwood & Cunningham in answer to this communication? A. I presume I did.

Q. I am free to say that we haven't been able to find any letter received by them from you, and I don't know whether you did or not. A. I presume I did.

Q. Do you recall what you said if you wrote to them? A. No, except probably a general expression of thanks or appreciation.

Q. Now, do you recall having received a check from them? A. Oh, yes.

Q. Shortly after that? A. Yes.

Q. What was the amount of it? Will you just look at the account and refresh your memory? A. Well, it was the difference between the \$750 which I had paid — I will have to ask your assistance here somewhere.

Q. I refresh your recollection by referring to a letter dated October 23, 1901. "Hon. James T. Rogers, Binghamton, New York. Yours of the 22nd instant received and contents noted. Enclosed we hand you statement of account and check for \$972.45 balance of same." That closes the transaction as far as the Transportation was concerned, did it not? A. Yes, sir.

Q. Is there anything that you have in mind that you care to say in regard to the transaction about which I have not asked you?

A. I have not.

Q. Did you ever receive any political contributions in the aid of your campaign fund from Mr. G. Tracy Rogers? A. I have no recollection of it. Is there any statement that I did?

Q. No, I haven't any such statement. He said generally that he had made contributions. A. I haven't any recollection of it.

Judge BRUCE: That is all.

Senator MALBY: Chairman Merritt, since being on the stand I have examined the books of Ellingwood & Cunningham with reference to these two items that were spoken about, and find two charges, evidently on those two checks, drawn on Harvey, Fisk & Sons.

By Judge BRUCE:

Q. Those are the margin deposits with which the account opened? A. Yes, those are the margin deposits, and unless I produce vouchers to the contrary we will assume that that is correct.

Judge BRUCE: Yes, that is according to our information.

ARCHIE E. BAXTER, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Colonel Baxter? A. Elmira, N. Y.

Q. What is your occupation? A. I am and have been for the last two years, nearly two years, secretary of the Brown Brothers Moulding Company, a corporation doing business in Elmira.

Q. You are not holding any public office at present? A. No, sir.

Q. You have held public offices, have you not, frequently? A. Yes, sir.

Q. And you were for many years clerk of the Assembly, were you not? A. Yes, sir.

Q. In what years, will you please tell me? A. 1895 to 1907, inclusive.

Q. You knew G. Tracy Rogers during those years? A. Yes, sir.

Q. Did you know that from 1895 to 1903 he was president of the Street Railway Association of the State of New York? A. No, sir, I knew that he was at one time and some years president, but what years I do not now recall.

Q. You recall it was during some of the years when you were clerk of the Assembly, do you not? A. Yes, sir.

Q. And did you frequently see him in Albany about the Capitol and in the hotels during the times of the sessions of the Assembly? A. I saw him there at different times.

Q. Now, were you acquainted with the firm of Ellingwood & Cunningham? A. Yes, sir.

Q. When did you first become acquainted with them? A. Well, it is almost impossible for me to state from memory, but I should think perhaps it was eleven years, perhaps.

Q. And what was the circumstances under which you became acquainted with them? A. That I do not know. I think I had a conversation with Mr. Rogers. It seems to me that we were coming down on the train from Binghamton either to New York or to Albany, and my recollection is that he spoke of his connection with this firm, and said that if I did anything in the line of speculation that he would be glad to have me do my business there.

Q. Had you speculated in stocks prior to that? A. Oh, yes, I have done more or less of it for thirty years.

Q. This account opened March 9th, 1899, according to the books of Ellingwood & Cunningham, would that concur with your recollection? A. I presume that is correct, no doubt it is.

Q. And was your son afterwards employed by the firm? A. Yes, sir.

Q. Do you remember what years your son was there? A.

Well, I do not, but I should think perhaps about 1902; should think about that time.

Q. For how many years did he continue to be connected with the firm? A. I think he was there only two years; that is my recollection.

Q. Your account was a large trading account, was it not, quite a large trading account, was it not? A. I would not call it very large; it was a moderate account.

Q. It extended down to the time of their failure, the time of their failure, February 15, 1905? A. Yes, sir.

Q. During the time you had this trading account with them, did you deal in a stock known as New York Transportation? A. I did.

Q. Let me say first of all: Was anyone interested in this account with you directly or indirectly? A. This Transportation?

Q. This whole account? A. No, sir.

Q. Or any part of it? A. No, sir.

Q. Was there anyone jointly interested with you in any part of this account? A. Every dollar represented money I put up out of my own funds, and nobody ever contributed a dollar to it; I was responsible personally and solely.

Q. It appeared from the evidence here given by Mr. Rogers or under his examination that certain communications had passed from Mr. Cunningham and the firm of Ellingwood & Cunningham to him in which he spoke of Mr. Rogers managing this account for you. Did you know of those communications? A. No, sir. Mr. Rogers never managed that account for me.

Q. I show you the communication in order, if possible, Colonel, to refresh your recollection, if you have no recollection about it, or if it is a fact, under date of November 11th, 1899, dictated by J. W. C., Ellingwood & Cunningham writes Mr. G. Tracy Rogers — I will withdraw that because I have a previous letter, I will take them in their chronological order; on July 11th, 1899, Messrs. Ellingwood & Cunningham wrote you as follows: "Mr. A. E. Baxter, Elmira, N. Y. Dear Sir: Yours of the 10th received. Do not hesitate to ask any questions you want. The present complications arise from the anxiety of our mutual friend Mr. G. T. Rogers to play a safe game for you;" and then they

go on to recite something about the quotations and sales of different stocks, and wind up: "In your case the stock advanced to 120¾, and Mr. Rogers sold it out, expecting to buy some back the next time he had definite information on it." I show you also a letter of March 9th, 1899: "Hon. A. E. Baxter, Albany, New York. Dear Sir: We beg to acknowledge the receipt through Mr. G. Tracy Rogers of your check for \$500 which we have passed to the credit of your account as margin. We will keep you advised of any trades Mr. Rogers makes for your account." Now, the latter letter which I was first going to read: "November 11th, 1899. Mr. G. T. Rogers, Binghamton, New York." This is a letter to Mr. Rogers. "We are writing you as usual for the reason you told us not to write Colonel A. E. Baxter. He has only one and a half per cent. on 100 shares Southern Pacific. You might send us your personal check for \$10,000 on his account." There is a postscript which says: "Ask the Colonel for \$1,500." Now, consulting these letters, does that refresh your recollection as to whether or not Mr. Rogers managed this account for you? A. Not in the slightest degree. Mr. Rogers never was authorized to write any such letters. There was no one ever authorized to write for \$10,000. I have never until this moment had a suggestion that any suggestion of the character ever had been made. There was not occasion for that. Whenever they asked me for margin, and margin was short, I supplied the margin out of my own private funds. Mr. Rogers never put up a dollar for me and never was asked to put up a dollar. No living man ever put up a dollar for me but myself. That first letter in March refers to the first \$500 that I ever put up as margin in that company. I did put up \$500 out of my own funds, and it is possible Mr. Rogers may have conveyed that check to them, but it was from money representing my own funds.

Q. Was that money that you had paid Mr. Rogers? A. No, sir; it was probably a check drawn by me to the firm, and may have been handed to Rogers to present to the firm, or may have been sent direct to the firm; I don't know now.

Q. Did Mr. Rogers on this occasion or on any other occasion advance any money to Ellingwood & Cunningham for you? A. Not one dollar, nor no other man.

Q. Now, Colonel, looking at the letter of March 9th, in this last sentence: "We will keep you advised of any trades Mr. Rogers makes for your account;" what did you reply to that? A. I do not recall what I replied, but Mr. Rogers never was authorized by me to make any trades for me of any kind or description whatever. Mr. Rogers having got me there as a customer, in a sense he may have been interested in a general way to see me successful in my deals, but beyond that there has never been a transaction between Mr. Rogers and myself that I should not be willing this Committee should know every detail about.

Q. Take the letter of July 11th, which says: "Present complication arises from the anxiety of our mutual friend G. T. Rogers to play a safe game for you," and then, "in your case the stock advanced to 120 $\frac{3}{4}$, and Mr. Rogers sold it out expecting to buy some back the next time he had definite information on it." What reply did you make to that communication? A. I do not remember anything about what reply I made, but I do reiterate what I said a moment ago, that Mr. Rogers was never authorized, to my knowledge, to conduct any of my affairs in that office.

Q. Well, now, did he conduct some of your affairs in that office; in other words, did he make trades for you without your authorization? A. No; Mr. Cunningham did.

Q. Mr. Cunningham traded for you? A. I have got something that will throw light on the subject.

Q. Was Mr. Cunningham interested in the profit or losses of the account? A. No, sir.

Q. Did he ever share directly or indirectly in the profit or the losses? A. No, sir.

Q. Now, Colonel, having received these communications from Mr. Cunningham, in which he notifies you that Mr. Rogers was in fact making trades for you, did you communicate with him and notify him that Rogers was not authorized to make any such trades? A. I presume I did, but I do not recall the transaction at all. I merely state to you now that no man, so far as my recollection goes, was ever authorized to handle any deals for me but James Cunningham himself.

Q. And was he authorized to make deals for you from time to time? A. He was authorized later on; I gave him *carte blanche*.

Q. To make purchases and sales? A. Yes, sir.

Q. And did he make purchases and sales for you? A. Yes, sir.

Q. Your account on the whole showed a loss, did it not? A. Yes, sir.

Q. At the windup? A. Yes, sir.

Q. A heavy loss? A. \$2,200, so the books state.

Q. And was that paid? A. No, sir.

Q. And did Mr. Cunningham assume that? A. He assumed it. This is the letter here that I wanted to explain that I did not owe them a dollar as a matter of fact.

Q. Make the explanation; I will give you the opportunity on behalf of the Committee? A. "Elmira, New York, September 17th, 1910. James W. Cunningham, Esq., New York City. Dear Mr. Cunningham: Replying to your favor of recent date asking if I have"—you will pardon me, my eyesight is very poor, and I will read it the best I can—"asking me if I have any objections to the examination of my account with the late firm by the Legislative Committee, I beg to say that I have no objection whatever. In this connection, however, I desire to say that the papers have made it appear that from your books I was at the time of your failure indebted to your company in the sum of about \$2,200. You are well aware that I did not, as a matter of fact owe the concern a single cent. In justice to me that should be made to appear at this time. You will recall that a long time before your failure we had a conversation on the boat while going to West End concerning my position in the market. You suggested that if I would turn my account over to you as it then stood with several thousand dollars to my credit on your books that you believed that with your experience and from the fact that you were constantly on the ground to take advantage of the market that you could and would bring me out a winner. You in fact gave me your personal guarantee to do so, and said further that if anything happened to me you would make it good to my family. Relying implicitly upon this assurance and my confidence in your experience and integrity, I then and there gave you *cart blanche* to handle my account as you saw fit. From that time on until the date of March 19th, 1904, you bought and sold for me without any interference on my part. On March 19th, 1904, you received a letter from me

which was handed you by Charles Baxter in which the above facts were recited more in detail. That letter concluded as follows: 'Now, I cannot and indeed dare not become personally liable for any amount beyond the sum now to my credit in my account with your firm.' This statement was written you from the fact that your handling of my account had for some months been uniformly unfortunate, and I was determined to limit my liability to the amount you had to my credit. I have two letters from you acknowledging the receipt of this letter, in one of which you state 'I will not call on you for any more margin neither will I allow your liability to be greater than it is no matter what happens.' Some time after your failure I received a letter from the Hon. Edward Lauterbach, the attorney for the defunct concern, stating that it appeared by the books of the firm that I was indebted to it in the sum of about \$2,200, and asking me to make good. With the correspondence referred to I called upon Mr. Lauterbach at his office in New York and he read the same carefully, and then said that it was perfectly apparent that I did not owe the concern a dollar at the time of its failure, but that, on the other hand, if there was an indebtedness at all, the concern owed me, and advised me to pay no further attention to the matter. In view of the above I believe that you should advise the Committee of this state of fact. With best regards, I am, yours very truly." I got in reply from Mr. Cunningham this letter: "Mr. Archie E. Baxter, Elmira, New York. My Dear Colonel: Your favor of the 17th received. I was certainly glad to hear from you even if you did haul me over the coals. In regard to your balance I notified Messrs. Hoadley, Lauterbach & Johnson when they took charge of affairs what the situation was, and I was surprised and sorry that they have bothered you about the same. As far as the Committee is concerned if the question comes up I will do my best to straighten the matter out for you. Very truly yours, James W. Cunningham."

Q. Now, is there anything further you wish to say in that connection? A. No, not at present, no.

Q. Referring again to your account, I call your attention to a transaction under date of May 8, 1901, if you will examine the original sheets here, a purchase of 200 Transportation at 5; do you recall that transaction? A. No, sir; I only had 200 all told.

Q. When did you acquire the 200 that you had? A. I acquired 100 of it after the adjournment of the Legislature in 1900.

Q. Do you know how long afterwards? A. I should think very shortly.

Q. And from whom did you acquire it? A. I bought that through Frank Price, then a member of the Assembly. His father was interested in the concern in New York and I put up \$500 margin with him and later put up more.

Q. When did you acquire the other hundred that you have referred to? A. I acquired that later; I cannot tell when.

Q. During the spring of 1900? A. It may have been.

Q. Is that your best recollection? A. I presume so; I do not remember when I bought it.

Q. In what way did you acquire that? A. That I could not tell you, unless if the books show I bought it through Ellingwood & Cunningham, probably that is correct.

Q. But your account does not show any trades in Transportation purchases, excepting the 200 to which I have called your attention on May 8th, 1901? A. They never bought but 100 shares for me.

Q. When did they buy the 100 for you? A. I don't know that.

Q. The second hundred? A. I don't know that.

Q. You are not sure about that? A. No, sir.

Q. Did you acquire any in 1901; that would be a year after you had bought the first hundred? A. I never had but 200 shares of it from anybody through anybody. 100 of it was not bought by Mr. Cunningham, but was bought by the house that Frank Price's father was connected with.

Q. Now, what I am trying to ascertain is whether or not this second hundred was bought as late as one year after the purchase of the first hundred? A. I am unable to tell you.

Q. How did you happen to purchase the first hundred? A. I did it for the reason that as those things are usually talked about it came to me in the ordinary way, that that was likely to be a good purchase, or was a good purchase.

Q. You at that time had an account with Ellingwood & Cunningham; how did you happen to buy it through Price and not

through Ellingwood & Cunnigham? A. For the reason that Frank Price was down here on the ground, and the stock as I recall it was street stock that was not sold through the regular boards, but a street stock.

Q. Curb stock? A. Curb stock, and he had stated that his father was familiar with purchases of that character and probably could buy it cheaper for me than I could buy it in the regular way.

Q. It appears from the evidence here that on March 26, 1900, Senator Goodsell introduced in the Senate a bill, which passed on the 29th, and went over to the Assembly, and passed on April 5th, 1900, which greatly enlarged the charter of the corporation known as the New York Transportation corporation, it had that legal effect; do you recall that bill? A. I do not. I recall in a general way that there was some such legislation.

Q. And do you recall that legislation it was thought would favorably affect the stock of this company? A. I do not recall that. I may say to you, if you will pardon me, Governor, that in the 13 years I was clerk I never interfered in legislation in any way whatever.

Q. I am not intimating that, Colonel, but my inquiry is this, and I will be frank with you; it seems that Nixon and Bedell and Goodsell and Mr. Allds and Mr. J. T. Rogers and yourself acquired this stock shortly after the passage of that bill; I do not mean by that to make any unjust inference, but I want to see if I can refresh your recollection as to whether or not it was common talk around Albany around the Legislature that this bill, if it became a law, would favorably affect the stock of this company? A. I am very sure that with any one of those gentlemen you have named I have never had a word of conversation on the subject previous to the purchase of that stock.

Q. Do you recall a conversation with any other member of the Legislature, or any other parties in Albany? A. I think I did talk with Frank Price, that is my recollection, but I am not real positive about that, but I think I did.

Q. Did Price refer to this pending legislation? A. Not that I am aware of, not that I recall now.

Q. What became of your 200 Transportation? A. I spent the summer in the North woods in Canada fishing.

Q. Which summer are you referring to? A. Both summers of 1900 and 1901, up in the camp, fishing and hunting, and I think from my recollection now,— now I am merely giving you my recollection; my recollection is that before I went away I left word that if that stock could be sold to good advantage or to let me out to let it go; just general verbal words. That is as far as my recollection goes.

Q. Had you in the meantime deposited the stock with Ellingwood & Cunningham? A. I must have done so in some way, and yet the physical fact of doing so has escaped my mind.

Q. No such deposit appears from the examination of your account. Now, an examination of your account shows that on May 8th, 1901, they purchased for your account 200 shares of Transportation at 5? A. I think that is where the mistake is, not that they purchased, but that they must have taken over.

Q. From you? A. From some other house, I presume that is so.

Q. That is only a matter of presumption? A. Yes, sir, it is a matter of presumption because the whole thing is hazy; it is ten years ago.

Q. Do you recall what you paid for the first 100 shares that Price purchased? A. No, my recollection is though that I got in at top, whatever the top was; I don't know what the top was.

Q. Oh, about 11 to 12? A. I should say perhaps higher than that if it went higher, I got in pretty close up to the top; that is where I usually get in.

Q. I think in this case you also went out at the top? A. I am very glad to say that I did; I was pleased with that part of it.

Q. Take the second 100 shares; do you recall at what price you purchased them? A. No, sir.

Q. Do not? A. No, sir.

Q. Then this entry here appearing upon their books of a purchase of 200 shares Transportation for you at 5 on May 8, 1901, is not in accordance with the fact? A. Not in accordance with the fact; they did not purchase but 100 at that time.

Q. It appears from the evidence that on May 7, 1901, which was a day before this purchase, Senator Goodsell, as he has testified — at least he has testified to that, that he had made an

option to dispose of 1,400 shares of this stock at 14; did you know anything about that? A. I have no recollection of it.

Q. None whatever? A. No.

Q. Did you ever know of this option of his, or his acquiring this stock and his disposition of it? A. I may say I might not — I cannot recall now; I would not say positively one way or the other.

Q. Did you know or do you know whether or not your stock was among the 1,400 shares that was delivered to him pursuant to that option? A. No, sir.

Q. Did you ever learn whether it was or not? A. I presume I may have learned.

Q. What became of your 200 shares? A. Well, it was disposed of at that time and the amount of money placed to my credit.

Q. Did you receive any notice of the sale or disposition of the stock? A. That I do not recall; I must have received either verbal or otherwise notice that the stock had been disposed of; I have no doubt that I did, but I do not recall it.

Q. I call your attention to a copy of a letter which appears in the letter book, October 21st, 1900: "Hon. A. E. Baxter, Assembly Chamber, Albany, N. Y. Dear Sir: We beg to advise you that we have passed to the credit of your account this day \$2,800, being the amount received from Hon. Louis F. Goodsell. You will understand the credit. Yours very truly, Ellingwood & Cunningham." Does that refresh your recollection? A. It only refreshes my recollection that such a letter must have been sent to me.

Q. Why do they say "we have passed to your credit \$2,800, being amount received from Senator Goodsell." Can you explain that? A. No, sir.

Q. Can you explain what they meant by "you will understand the credit?" A. I have no doubt that that was a formal letter that they sent out to everybody that had this stock.

Q. They did; that was a letter that they sent to each one whose stock went into the pool? A. They sent it to those who would understand it, and those who might not understand it alike.

Q. When you received the letter what did it convey to your mind? A. That the stock had been disposed of.

Q. To whom? A. I don't know.

Q. Did it convey to your mind that it had been disposed of to Senator Goodsell? A. No.

Q. You noted of course that it had been sold at 14? A. Yes.

Q. Had you known that they had purchased it for your account in the May previous at 5? A. No, sir.

Q. Did you know in May, the time this option was made, that it was quoted at a little over 4, and finally went down in June to a little over one? A. I do not recall that.

Q. Did you follow the price of the stock on the curb? A. Undoubtedly I did look at it from time to time; I have no doubt that I did.

Q. Were you not then gratified to find that in October they had disposed of this stock, which had been a little over 4 in May and a little over one in June, at 14? A. Well, it is pretty difficult to tell what one's emotions were ten years ago, but I have no doubt I was satisfied with the sale.

Q. My attention has been called to the fact that in examining you in regard to this letter of November 11, 1899 — you will just look the letter over — which I will read in full to you — “Mr. G. Tracy Rogers” — this is a letter from Ellingwood & Cunningham to Mr. Rogers under date of November 11, 1899. Now you will recall that I called your attention to the two previous letters which you had received from Ellingwood & Cunningham. Those were letters to you in regard to Mr. Rogers playing a safe game for you, and trading on your account. Now, this letter reads — I won't read the first part of it, which refers to the bank statement and the condition of the market generally, but this paragraph, “We are writing you as usual for the reason that you told us not to write to the Colonel. A. E. B.” — which are your initials — “has only one and a half per cent. margin on 100 Southern Pacific. You might send us your personal check for \$10,000 on his account. When are you coming down? If not on Monday, telephone us in the morning. Have some good news for you. Yours truly, Ellingwood & Cunningham.” and then this postscript, “Ask the Colonel for \$1,500.” I inquired about the \$1,500, but my attention has been called to the

fact that I did not inquire why he was asked to put up ten thousand dollars for you. A. There is no reason under the heavens why he should have been asked, and I don't believe he ever was asked.

Q. But there is the letter. A. I don't care. He never put up one dollar, and there was no reason under the heavens why he should have put up a single dollar for me. I give you my bald statement, and I defy contradiction here and now from any man living that he ever put up a dollar for me to trade on in this manner. The man does not live that ever did it.

By Assemblyman YOUNG:

Q. Did you say what you meant? Did you mean to say living or dead? A. I will say living or dead.

By Judge BRUCE:

Q. Did he at that time put up the \$10,000? A. No, that is a blank to me. I can't imagine what it is for.

Q. Answer my question. Did he at that time put up ten thousand dollars for you, to your knowledge? A. No, sir; nor ten cents.

Q. Did he at any time advance margins for you? A. No, sir; not ten cents nor one cent.

Judge BRUCE: I understood that to be your evidence.

J. W. CUNNINGHAM, recalled:

Examination by Judge BRUCE:

Q. Now I call your attention, Mr. Cunningham, to this letter to Mr. Rogers under date of November 11, 1899, and to this portion of the letter: "A. E. B. has only one and a half per cent margin on 100 Southern Pacific. You might send us your personal check for \$10,000 on his account. When are you coming down," etc.? And then this postscript, "Ask the Colonel for \$1,500." A. It looks like "We ask the Colonel for \$1,500."

Q. That is not the important part of it. The important part of it which I wish you to explain is why you were asking Tracy Rogers to put up \$10,000 for Colonel Baxter on 100 shares of

Southern Pacific? A. I don't know that we were. That would be ridiculous, \$10,000 would pay for it time and again.

Q. Did you write that letter? A. I wrote the letter; yes, sir.

Q. Well, read that paragraph to me, read it aloud? A. (Witness reads:) "A. E. B. has only one and a half per cent margin on 100 Southern Pacific." Period. "You might send us your personal check for \$10,000 on his account." That is beyond any question a typographical error. If you will look at his account on that day you will see that he needed \$10,000.

Q. Well then, why didn't you say "your account?" Why did you say "his?" A. I say it is a typographical error.

Q. Oh, it is not an omission or the addition of a letter, it is a word, it is the word "his." A. It is the wrong pronoun.

Q. Now you will notice further that the word "his" is underscored, the "ten thousand dollars" is underscored. Why is the word "his" underscored, do you know? A. I don't know.

Q. But it is understood, isn't it? A. That is done by some one else.

Q. Why, it is underscored in ink, the same colored ink as the postscript is in. I want to know why you made a typographical error so emphatic? A. That is right, it is in ink, and that is my writing, too.

Q. Well, what is your explanation I ask you? A. Just exactly as I told you. That was meant for "your."

Q. But it says "his." A. Yes, but that is an error.

Q. Did Tracy Rogers from time to time put up margins for the account of Colonel Baxter? A. Never, to my knowledge: I never heard of it.

Q. Did you ever ask Tracy Rogers at any time other than this letter to put up margin for Colonel Baxter's account? A. Not that I recall.

Q. Now you notice these communications which you sent to Colonel Baxter — you heard my examination of Colonel Baxter? A. Yes, sir; most of it.

Q. Will you kindly read your letter to him of March 9, 1899, and also the letter of July 11, 1899, both of which have been read into the record.

(Witness examines letters referred to.)

A. That letter is all right.

Q. That is the first one, is it? A. Yes, sir.

Q. Was Mr. Rogers authorized by Mr. Baxter to make trades on his account? A. Not that I know of.

Q. Then why did you say "We will keep you advised of any trades Mr. Rogers makes for your account?" A. I can't tell you.

Q. What does that mean? A. My only inference would be —

Q. No, I don't want your inferences, I want your recollection. A. I have no knowledge or no recollection. You know Mr. Rogers —

Q. No, I don't want to know about Mr. Rogers. I want to know if you have any present recollection whatsoever in regard to the reason why you wrote that letter to Colonel Baxter? A. No, sir.

Q. Now, I call your attention — you note there it also says, "We beg to acknowledge receipt through Mr. Tracy Rogers of your check for \$500 which we have passed to the credit of your account." Did Colonel Baxter make his advances or margins to you through Mr. Rogers? A. Probably Colonel Baxter frequently gave Tracy Rogers his check to bring to New York, when he was coming down.

Q. Did he do that at other times? A. I don't know.

Q. Do you know whether he did it at any other time? A. I don't know.

Q. In the letter of July 11, you say, "The present complication arises from the anxiety of our mutual friend, Mr. G. Tracy Rogers, to play a safe game for you," and then at the close it says, "In your case the stock advanced to 120¾, and Mr. Rogers sold it out expecting to buy back the same the next time he had definite information on it." Does that refresh your recollection as to whether Mr. Rogers was playing a safe game for Colonel Baxter? A. A safe game is when he had a profit on it to take the profit.

Q. Was he trading in the interest of Colonel Baxter? A. Colonel Baxter undoubtedly gave him an order to sell when it advanced.

Q. Did he give you any instructions in regard to the authority which Mr. Rogers had to trade for his account? A. No.

Q. Then or at any other time? A. Only at the time Colonel Baxter, in March —

Q. I am speaking now of directions given to Mr. Rogers. A. I have no knowledge of it at all.

Q. Mr. Rogers was trading on his account, was he not? A. Not at all, only as Colonel Baxter would say to him, if he was coming to New York to-morrow morning to buy this or sell that. In that case Rogers isn't trading for Colonel Baxter, under those circumstances he is acting the part of a postman.

Q. Did Mr. Rogers to your knowledge make any purchases or sales through your firm on account of Colonel Baxter? A. Not that I know of now.

Q. Well, he made this one, didn't he? A. Apparently.

Q. Did he make any others? A. Not that I know of.

Q. Did Colonel Baxter by telephone, telegraph, verbally or in writing authorize you to permit Mr. Rogers to make any purchases or sales for his account? A. Not as I recall now.

Q. Well now, have you any other recollection other than you have given us in regard to this \$10,000 transaction? A. It is very evident to me, as I told you.

Q. It is not so plain or evident to me. A. If you will read it and notice the punctuation at the end of the sentence —

Q. It uses the word "his" instead of "yours," and the word "his" is underscored in ink. A. If you will have your accountant look up Tracy Rogers' account on that date, I make now the statement you will find that he needed ten thousand dollars in his account.

Q. Yes, he probably needed \$10,000 on most any date. A. That is not so, on most any date.

Q. Most any man needs money on any date, but here is this letter, with the words, "ten thousand dollars," and the word "his" underscored. Have you any other explanation to make of that than the one you have given? A. No, sir.

Q. You will note in Colonel Baxter's account that he is charged with the purchase of 200 Transportation on May 8, 1901, at 5. Did you have any knowledge of that transaction? A. I don't recollect it now.

Q. Well, he has just stated upon the stand — you heard him testify — that he didn't make any such purchase, and that there isn't any such purchase. A. I can't help it. If you will look

up the original order book you might find it. You have the original order book among your papers.

Q. Colonel Baxter states that he deposited with you 200 shares of Transportation, that he bought 100 shares through Colonel Price, and possibly 100 through your firm, no records of which transactions appear in this account. Did he make any such deposit of stock? A. If he did it would be entered in here as stock received. If he directed us to take up some other account it would be 200 Transportation at five, \$1,000, but this entry shows that we purchased it and charged commission.

Q. There is no such entry as you refer to indicating any deposit of Transportation in this account. A. Then we didn't receive it.

Q. And he is mistaken? A. He must be mistaken, yes, sir.

Chairman MERRITT: The Committee will stand adjourned until October 5. In view of the State conventions next week it will probably be difficult for all the members of the Committee to be here. Witnesses will be prepared to appear on that date, at 11 o'clock, unless excused by counsel.

Adjourned to Wednesday, October 5, 1910, at 11 A. M.

TENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,
NEW YORK, *October 5th, 1910 — 11 A. M.*

Present — HON. EDWIN A. MERRITT, JR., *Chairman.*
HON. ALEXANDER BROUGH, *Vice-Chairman.*
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel.*
ISIDOR J. KRESEL, ESQ., *Assistant Counsel.*

MR. E. W. MOSES, *Secretary.*
MR. CHARLES R. HOTALING, *Sergeant-at-Arms.*
MR. GEORGE M. SHOTWELL, *Official Stenographer.*

Chairman MERRITT: The Committee will be in order.

MARVYN SCUDDER, called as a witness, being duly sworn,
testified as follows:

By Mr. BRUCE:

Q. Where do you reside, Mr. Scudder? A. 45 Fifth avenue,
New York city.

Q. What is your business? A. I am an accountant.

Q. Where are your offices? A. 55 Wall street.

Q. Have you since the last hearing, at the request of the Committee, computed the interest charged on the account of Mr. Malby? A. I have.

Q. With Ellingwood & Cunningham? A. I have.

Q. And what did you discover with regard to the amount of interest which had been charged on the account? A. I discovered that the entry September 30, 1904, "Credit, rebate interest, \$5,079.67," was, according to my calculation, was within 76 cents of an even four per cent. computation of interest from the very beginning to August 31, 1904, in this account.

Q. That is, not including the credit of \$500 which appears in the account as of July 23, 1903? A. Yes, sir.

Q. You mean by that, that it does not include the \$500? A. It does not include the \$500.

Q. Now, prior to the time this rebate was made, what did you find was the rate of interest that had been charged on the account? A. The rate of interest that had been charged on this account with the exception of the month of September, 1902, was an even 6 per cent.

Q. And this rebate was made when the account was closed, was it not, or shortly before that? A. Shortly before the account was closed.

Q. On what date was the account closed? A. The account was closed December 29, 1904.

Q. What was the date of this rebate of five thousand and odd dollars? A. September 30, 1904.

Q. Mr. Malby testified on the stand that during the month of October, 1902, that about 8 per cent., between 8 and 10 per cent. had been charged; did you calculate the interest charged for that month? A. I did.

Q. What did you ascertain it to be? A. 6 per cent.

Q. Did you find any reason for this miscalculation which had been made, as Mr. Malby testified, by his secretary? A. I did not.

Q. Well, Mr. Malby also testified that the computation which was made for him showed that during August, 1902, nearly 10 per cent. had been charged; did you compute the interest for that month? A. I did.

Q. What did you find it to be? A. I found that the interest had been calculated at an even 6 per cent.

Q. And did you find any reason for the error which had been made by the person who computed it for Mr. Malby? A. I did.

Q. What was it? A. During the month of July, 1908, as shown on Mr. Malby's account, there was a short sale, and the bookkeeper entered certain figures on the credit side of this account. This was a wrong transaction; he should not have entered those figures.

Q. On account of it being a short sale instead of a purchase? A. Yes, sir.

Q. And that accounted for the difference, did it not? A. That, in the calculation of interest, accounted for the difference, for, sometime in August apparently, he discovered his error and figured the interest that had been not figured before on these amounts during the thirty-one days in August.

Q. Then this credit of \$5,079.47, which was made in September, before the account was closed, reduced the interest charge made on the account during its entire existence to 4 per cent., independent of the credit of \$500. to which I have referred? A. Yes, sir.

Judge BRUCE: That is all. Mr. Cunningham.

JAMES W. CUNNINGHAM, resumed:

By Mr. BRUCE:

Q. Mr. Cunningham, you will recall that at the close of the examination, at the close of your examination, rather, at the last hearing of the Committee, I was examining you concerning a letter which had been written by you to Mr. Rogers dated November 11th, 1899, with reference to a request that he would send a personal check for \$10,000; do you recall that? A. Yes, sir.

Q. Now, have you attempted to refresh your recollection since that time with reference to the contents of the letter? A. Yes, sir.

Q. Now, let me read it again to you: "November 11th, 1899. Mr. G. T. Rogers, Binghamton, N. Y. Dear Sir; Our mutual friend, the Colonel, has but about 3 per cent. margin on his ac-

count, and we are afraid on Monday morning will have nothing, because this market is bound to go lower on account of the very bad bank statements. The banks are over \$3,000,000 behind their legal requirements, and have to force further liquidation to get that money back at"—the copy in the press has failed to work through here—"and as there seems, I presume, to be very little prospect of its coming in from the interior before the first of December. Incidentally Manhattan is suffering from liquidation caused by the very bad annual statement and the push that the Rapid Transit scheme is now having. In our opinion Manhattan will break twenty points or more, and should be sold short. We are writing you as usual for the reason you told us not to write the Colonel. A. B. has only one and a half per cent. margin on Southern Pacific. You might send us your personal check for \$10,000 on his account. When are you coming down. If not on Monday, telephone us in the morning. Have some good news for you. Yours truly." Then the signature not copied. Then, written in pen: "We asked the Colonel for \$1,500." Then two crosses, and then, "We asked the Colonel for \$1,500." What is your refreshed recollection in regard to that? A. That says "We asked the Colonel for \$1,500" all right. My recollection is, as I told you on the stand, I believe that \$10,000 referred to Mr. Rogers' account. When I went over the account with Mr. Washburn I found Mr. Rogers required \$10,000 margin in his account the day the letter was written.

Q. There were many times Mr. Rogers required \$10,000, were there not? A. We are only discussing this particular letter and date, aren't we?

Q. That does not answer my question. Will you answer my question? There were very many times when Mr. G. T. Rogers needed \$10,000 margin, weren't there? A. I could not say now.

Q. Can you recollect any time before or after that he needed it? A. Yes, sir.

Q. Then there were times that he needed it? A. Yes, but I do not know a great many.

Q. A few, then? A. Yes, sir.

Q. Look at that letter again, study it carefully, and tell me whether or not there are not two colonels referred to there in-

stead of one? The word "colonel" is used there three or four times; does that refer in each instance to the same person, the same colonel? A. I could not tell now.

Q. Read the letter aloud. A. You just read it. It might refer to someone else. The only way I could check that up would be to look over our other accounts and see if any other account required margin. I could not tell by this under any possibility.

Q. How does it start off; just read me the first line again? A. "Our mutual friend, the Colonel, has but three per cent. margin to his account."

Q. What colonel does that refer to? A. I could not tell you now.

Q. Read down below again in the middle of the letter, and what does it say the colonel referred to there has on his account? A. "We are writing you as usual for the reason you told us not to write the Colonel."

Q. What colonel does that refer to? A. I presume the first one mentioned.

Q. What colonel is that? A. I could not tell you now; I haven't the slightest idea.

Q. Read down still further and see what it says beyond that. A. "A. E. B. has only one and a half per cent. on 100 Southern Pacific."

Q. That is Colonel Baxter, is it not? A. I presume so.

Q. Then A. E. B., who had only one and a half per cent. margin on a hundred Southern Pacific, that was the same colonel as was referred to up above who had only three per cent. margin? A. That is right unless the market broke while I was writing the letter.

Q. And probably it did not; what two colonels are referred to if it did not? A. I could not tell you who the other is to save my life.

Q. What other colonel was there interested with Mr. Rogers, if any? A. Colonel Fox.

Q. Was he interested with Mr. Rogers? A. We had his account; that is the only Colonel I can recall now.

Q. Did he have an account, did you have an account, Rogers and Fox? A. No.

Q. What other colonel was interested with Mr. Rogers concerning whose account you would be writing to Mr. Rogers? A. I could not tell. If you let me have the ledger of that date I could probably tell.

Q. I show you the index of the bound ledger of that date. A. There was J. V. Aitken. I don't know whether he was a colonel or not. I think he was.

Q. Where did he live? A. I don't know.

Q. Was he a man concerning whose account you would be writing to Mr. Rogers? A. Quite likely.

Q. You don't know where he lived? A. I do not know where he lived.

Q. Then why do you think he was interested with Mr. Rogers? A. Because he was a personal friend of his, a business associate, I think.

Q. Tell me some other man you would call colonel; do you find any other? A. Not so far.

Q. Did you know a man by the name of Colonel Dunn, who lived in Binghamton, who had a joint account with Mr. Rogers?

A. Yes, sir.

Q. Does it astonish you to refer to that? A. No.

Q. Did you know any other colonel in Binghamton that was connected with the Rogers account than Colonel Dunn? A. I did not know Colonel Dunn at the time, if you call him Colonel Dunn.

Q. Isn't it a fact that the colonel you are referring to there, handing you the letter again, was carrying Manhattan? A. I could not tell without looking at his account.

Q. What does it say there? A. It says this man was carrying Manhattan.

Q. What does it refer to there? A. Speaking of the general market, there was a general break.

Q. Now, I show you the account in the ledger, which we fortunately have. See whether or not Colonel Dunn was carrying Manhattan at that time? A. 100 Manhattan. He was long. 100 Manhattan.

Q. Then the colonel referred to was carrying Manhattan, was he? A. One minute. He had it on that date, yes.

Q. Well now, Mr. Cunningham, without any halting or hesitating, read that letter again and tell me if the first colonel there referred to was not Colonel Dunn? A. I would say yes, without reading the letter, now. No question about it.

Q. The colonel referred to in the postscript, which colonel was that? A. I should say that would be Colonel Dunn.

Q. The colonel referred to in regard to the \$10,000, which colonel was that? A. That was Tracy Rogers' personal, I know for a fact.

Q. How do you know for a fact? A. Because his account warranted it. And I was talking to my stenographer at the time this was drawn, and he said unquestionably this was an error.

Q. It is a very conspicuous error? A. It certainly was carelessness, but his account wanted \$12,000 as a matter of fact on that day.

Q. Now, notice that this letter is paragraphed off. Do you notice the paragraph in which the reference to the \$10,000 account really occupies a line and three quarters, and it reads "A. E. B. has only one and a half per cent margin on 100 Southern Pacific. You might send your personal check for \$10,000 for his account." Now if you referred to Rogers' account, why would you say personal check. It would then read, "You might send your personal check for \$10,000 on your account." A. That is what it should have said.

Q. Why, if he was going to send \$10,000 on his account, why say send his personal check? A. Because we were writing about two accounts, and without any conflict, we wanted to say on his—his own account.

Q. If you want a customer to send \$10,000 margin, you write him to send his personal check? A. Not him alone.

Q. Why did you say send his check, on his personal account, in which you said you might send your personal check on his account? A. I suppose I was not competent to write decent English at that time.

Q. Now, Mr. Cunningham, it appears in the evidence here that in May, 1901, you received a receipt from Mr. Goodsell for 1,400 shares New York Transportation — 1,500 shares New

York Transportation. Tell us all about that, will you? A. I think we received it for 1,400 shares, Senator Goodsell, on his own account, 1,500? Yet, that receipt might be 1,500. I kind of think you are right about that. Senator Goodsell — all I know about it — told me that he had a put arranged with some party — I have forgotten his name, although it is mentioned here in the testimony, to deliver him these 1,400 or 1,500 shares of Transportation at 14. Is it 1,500 shares?

Q. It is 1,500 shares, as appears by Exhibit 14? A. He told me that he had made a contract with this man to deliver that stock to him at 14, at a future date. He asked me if I would let him have the stock now and wait for the money. And I says, it is just up to you gentlemen who have got this stock. He wanted to know how much we had, and I found that we had only 1,400 shares available for that. There was other stock there, but these people would not deliver it because there was a tremendous bull tip on the stock at that time, and some people expected to get 100 for it. That stock was finally delivered at the date of that receipt. It was finally paid for some months afterwards, and fortunately he had his contract, which made it binding for the man to take it on that date, otherwise the man would not have taken it. It is the same kind of a put and call that is traded on in Wall street every day.

Q. I did not ask you for any lecture, I am asking you for the facts? A. I am just telling you.

Q. Now you tell me but the facts? A. That is all I know about it.

Q. Who did Mr. Goodsell say he had this contract with? A. I don't remember the name. It is mentioned there.

Q. I did not ask you whom he had it with, but whom did he say he had it with? A. I don't know.

Q. Did he say? A. I don't remember.

Q. Did you inquire? A. I did not.

Q. Well, you had these 1,400 shares, had you, of stock? A. Customers had them.

Q. The customers had them, and you communicated with your customers, did you? A. I presume so.

Q. Who asked them for them to authorize the sale? A. Authorize the delivery.

Q. Did you communicate with each one of them? A. I think so.

Q. Did you wire them or communicate with them in writing? A. I could not tell you now.

Q. Don't you recall how you communicated with anyone of them? A. I have not the slightest idea.

Q. Who were they? A. Well, there was, as far as I recollect it, Mr. Bedell, Mr. Baxter, Mr. Goodsell's was 100, I think Mr. Nixon had some. I think there was one other—I don't remember.

Q. Mr. Rogers? A. No, sir.

Q. J. T. Rogers? A. Mr. James T. Rogers; yes, sir.

Q. He had some? A. Yes, sir.

Q. You said Mr. Baxter? A. Baxter.

Q. And did each one of them authorize you to make the sale? A. Yes, sir; make the delivery.

Q. When you communicated with them, did you explain to them to whom you were going to deliver the stock? A. I could not say now. I presume so.

Q. Now, after you delivered the stock you notified each one of them of the delivery? A. Their credit.

Q. And of the sale? A. Of the delivery—not a sale—of the delivery. There was no commission charged.

Q. I show you a copy of a letter sent by your firm to James T. Rogers, October 21st, 1901: "Mr. J. T. Rogers, New O'Neill Building, Binghamton, New York. Beg to advise we have passed to credit of your account \$1,400, being amount received from Hon. Lewis F. Goodsell. You will understand the credit." What does that mean, "You will understand the credit." A. It means, undoubtedly, that it is in accordance with the arrangements we had made with him at the time to deliver the stock at 14.

Q. And why "you will understand the credit," what does that part mean? A. Just what I said.

Q. It does not amplify what goes before. What does it refer to? A. There is quite a difference between a delivery and a sale, Judge. When you deliver a stock for a price, why, they know it must be delivered by agreement. If delivered by a sale of course there is a commission charged, and that is an ordinary transaction.

Q. Did you hear Mr. Rogers testify? A. James T.; yes, sir.

Q. Do you recall his testimony in regard to that transaction? A. I don't know that I do.

Q. Do you recall that he testified that he had the stock deposited there; that he knew nothing about your contract with Mr. Goodsell; knew nothing about the delivery of the stock until he received this communication; never knew that there had been any transaction between you and Mr. Goodsell at all, and that this is the first information he had in regard to it. Do you recall that? A. If he said that, I should say that he was in error; had forgotten this. It is ten years ago.

Q. Now, we don't find anything in your letter books covering that period, copies of any letters to anyone of these gentlemen who contributed to that pool of stock, notifying him that Mr. Goodsell had this contract, and you were going to deliver the stock to Mr. Goodsell if it was agreeable to them. There is not a single letter there to that effect. A. Suppose we had a hurry-up job —

Q. Now, I don't want a suppose. What was the fact? A. I don't know.

Q. Why were you communicating with them — what was you communicating with them? A. Now I am going right back to supposing again. I am just telling you that I don't know.

Q. But in the copies of telegrams, there are no such letters or telegrams. How do you think you communicated? A. My letters to each of the individuals explain each transaction open and above board, and at the time of the delivery, and it says, "You will understand." Therefore, they must have understood it at the time.

Q. That is a matter of inference? A. I am stating a fact, that they know about the delivery.

Q. You also recall the evidence of Mr. Baxter, to the effect that he knew nothing about it until he received this note? A. Baxter is an old man, and I am afraid his memory must be failing. My letters very plainly state, and all of them, what the situation is.

Q. Yes, but you state to us that you communicated with them at the time the contract was made, and there is no record of any such communication? A. I can't help that.

Q. And each one of these men go on the stand and testify that they had no knowledge of it, and you testified that you did notify them? A. I certainly did, or the firm would never have made such a contract.

Q. What was the stock selling for on the curb at the time the contract was made? A. I don't remember now.

Q. Do you recall that it is shown in evidence here that it was quoted at 4? A. A long time afterwards, yes, sir.

Q. Quoted at 4 at the time this receipt was delivered in May? A. That may be, but the contract may have been made a long time before that.

Q. Mr. Goodsell testified that it was made out by him about that time? A. Well, he ought to know. I don't.

Q. Do you recall that in the next month that that stock went down to one and a half? A. No, sir.

Q. Do you recall that on the 6th of June, 1901, an assessment of \$10 a share was made on this stock. Who paid the \$10 a share assessment? A. I don't know.

Q. \$10 a share on 1,400 shares would be how much? A. \$14,000.

Q. Who paid that assessment? A. I don't know.

Q. Did your firm pay it? A. The books will show, if they did.

Q. Well, did you or did you not? A. I have not the slightest idea. I could not remember that, Judge, could not possibly.

Q. I find that is quite correct? A. Judge, I would just like to explain that our business amounted to something like two billions of dollars a year at that time.

Q. Not carrying those things in your memory, you would be very careful to have such things in writing? A. I am very proud to say that everything that way is right down there in black and white.

Q. I cannot find any record of this, showing this contract with Mr. Goodsell? A. You won't let me tell you why.

Q. Why, can you tell? A. I tried to tell you, of course, and you said you didn't want to hear.

Q. Why do not these communications appear here? A. I presume, now —

Q. I don't want presumptions, I want to know why? A. I have nothing to say.

Q. Presumptions are of no value to this Committee. They can presume as well as you. A. I say, you don't want an explanation.

Q. Do you recall when the stock was actually delivered? A. No, sir, the date of the receipt will give it to you there.

Q. I show you Exhibit No. 14, being the receipt received from Mr. Goodsell, showing that the delivery was made on May 7. A. May 7, 1901.

Q. Yes, May 7, 1901. I call your attention now to a letter written by you June 4, 1901, to Mr. Goodsell, as follows: "Hon. Louis F. Goodsell, Highland Falls, New York. My dear Senator: Referring to the 1,500 Transportation which we delivered to you the other day"—well then, the delivery was made at the time of the receipt? A. Yes, sir.

Q. "Please let us know by return mail when we may expect to hear from you in regard to the same. As I told you at the time of the deal, all we had against the most of this was a debit balance and of course we are very anxious to hear from you. The general stock market looks very strong and believe we are going to have much higher prices." What did that refer to? A. We wanted to get the credit funds back, the proceeds of the stock.

Q. All you had for that stock from each one of these men was a debit balance—is that right? A. That is what the letter says.

Q. And that means that each one of them had not paid for it? A. Yes, sir.

Q. None of them had paid for it? A. No, that means undoubtedly that we had paid the money, the money we advanced to buy the stock.

Q. You had not received that back from them? A. No, when a man buys stock on margin he doesn't pay for it.

Q. You mean by that that none of these parties which bought that stock at that time had paid for the stock? A. No, they bought it on margin.

Q. Why did not Senator Goodsell pay for this stock at the time you delivered it to him? A. I can't tell you that.

Q. The delivery was complete, and the transaction closed? A. That was a part of the option, it was a part of the option that it was to be paid for later.

Q. You were not a party to the option, were you? A. No, sir.

Q. That was a matter between Senator Goodsell and the man he had the option with, was it not? A. We trusted Senator Goodsell with the stock. That is a broker's privilege — we simply acted as brokers in the matter.

Q. Did you explain to your customers who held the stock that that was an option? A. Certainly I did.

Q. I call your attention to a letter written the 12th of September, 1902, to Senator Goodsell as follows: "Dear Sir: We are sorry to write you again on the subject of the 1,500 Transportation stock which was delivered to you, but as much time has elapsed and the debit balance still remains the same we must ask you to try and arrange with your friend to pay up the balance due you. It certainly is not fair to you to have this hanging fire in this way, and for about six months after delivery, and we think you are entitled to demand that they make a settlement at once." If payment was made when the option was to close, why are you insisting on payment from Senator Goodsell at once? A. We wanted the money.

Q. But you stated to me a few moments ago that your arrangement with Senator Goodsell at the time of the delivery was that he was to pay you when he got his money, which would be at the time the option expired, would it not? A. I presume so, but I don't know when the option expired. The date is not given there.

Q. What do you mean by this phrase then: "Try and arrange with your friends to pay up the balance due you?" Why do you say "friends"—how did you know they were "friends?" A. That was simply a polite letter to Senator Goodsell. We were writing to him for the money, but in writing to a customer to put up margin you don't hold him up for the money, you don't take a man and say "Pay up"—you would ruin your business that way. We have to be easy with a man when we call for margin. We took it for granted that he was working for others.

Q. Did he state that he was working for others? A. No, sir.

Q. Then why do you say "Your friends?" A. I am talking that for granted.

Q. You knew nothing at all about this? A. No, sir, except what I told you.

Q. And yet you urged him to try to arrange with his friends, to try to arrange with his friends to have them pay up? A. I am telling you why we did that.

Q. I refer again to your letter of October 7, 1901, to Senator Goodsell, reading as follows: "Dear Sir: Yours of the 7th inst. received and much obliged for the same. Hope they will not hang you up longer than ten days more." Who were the "they" referred to? A. I don't know — have you his letter to us?

Q. Didn't he state in his letter who they were? A. I don't know.

Q. Do you recall? A. I haven't the slightest recollection.

Q. But we don't find that letter unfortunately. That is among the records that are missing. Can you help us by telling us from your recollection who these "they" were? A. I will ask Mr. Hackley. He wrote that letter and he may recall.

Q. They were evidently the friends that he was gathering this stock for. A. He may have said that in his letter.

Q. You don't know who the "they" were? A. I haven't the slightest idea.

Q. Did he ever tell you for whom he was gathering the stock? A. He certainly did not.

Q. Did you inquire? A. I did not — it was none of my business.

Q. And still you say you notified each of these persons that you were going to make the delivery at fourteen? A. I must have, or I could not have made the agreement to deliver. Their accounts were credited with the individual amounts.

Q. When you finally settled up with Goodsell, did you get \$19,600? A. That is right.

Q. Who paid the assessment of \$14,000 — ten dollars a share? A. I haven't the slightest idea.

Q. Did your firm — there is no record of it? A. Then we didn't pay it.

Q. Well, none of these gentlemen paid it who profited by the deal, and Senator Goodsell didn't pay it — have you any idea who did pay it? A. Not the slightest.

Q. Those in interest must have paid the \$14,000? A. I suppose so.

HENRY A. ROBINSON, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside? A. Yonkers, N. Y.

Q. Whereabouts in Yonkers? A. 94 Hudson terrace.

Q. How long have you resided there? A. Since 1888.

Q. What is your business? A. Lawyer.

Q. Where are your offices? A. 2 Wall street.

Q. How long have your offices been at 2 Wall street? A. About two years.

Q. Prior to having your offices at 2 Wall street where were your offices? A. 21 Park Row.

Q. How long were you at 21 Park Row? A. I think about some months over a year, Judge.

Q. Prior to that time where were your offices? A. 621 Broadway, Cable Building, offices of the Metropolitan Street Railway.

Q. You were then connected with the Metropolitan Street Railway Company? A. Yes, sir, or its lessee, the New York City Railroad Company.

Q. In what capacity? A. I was general attorney for all the corporations which were in the Metropolitan Syndicate, most of them at least.

Q. How long did you hold that position? A. I commenced my connection with the railroads in June, 1893.

Q. And what was your first connection? A. I was general attorney for the roads that formed the First Metropolitan Street Railway Company.

Q. And you continued to be connected with the Metropolitan or the New York City down to what time? A. About two years ago—shortly after the date of the receivership.

Q. During this period what offices did you hold other than general solicitor? A. I was defendant's attorney in all the suits, and for a very short time I was second vice-president.

Q. Of the Metropolitan? A. Of the Metropolitan.

Q. Did you hold any other office at any other time, other than second vice-president? A. I was a director—do you mean director when you asked if I was an officer?

Q. Yes. Did you hold any other office in addition to second vice-president and director? A. No.

Q. Were you a stockholder in the road? A. I had some qualifying shares.

Q. Prior to your connection with the Metropolitan — that was in 1893, you say? A. Yes, sir.

Q. Were your offices in New York? A. Yes, sir.

Q. When were you admitted to the bar? A. In 1888, in June.

Q. Since that time have you always practiced in New York? A. I have.

Q. Are you acquainted with Mr. Tracy Rogers? A. I am.

Q. How long have you known Mr. Rogers? A. I think since 1894, I should say, sir.

Q. How did you become acquainted with him? A. Through street railroad relations.

Q. Through his connection with the Association for Street Railways for the State of New York? A. I think so.

Q. Had you known him prior to the time when he was elected president of the association? A. No, sir.

Q. He first became president in 1894-95, did he not? Do you recall? A. I can't say, Judge; no.

Q. I show you a copy of the twenty-seventh annual meeting. Please examine it and see if that refreshes your recollection? A. This shows it, but you will see that I didn't come in here until later on, 1896-97. I had no particular knowledge of those two years.

Q. I asked you whether your acquaintance with Mr. Rogers, which you said began in 1893 — A. 1894.

Q. Was occasion by reason of Mr. Rogers' connection with the Street Railway Association of the State of New York? A. I think so.

Q. Well, in 1893-94 he was the first vice-president, was he not? A. Yes, sir.

Q. And in 1894-95 he became the president? A. The record shows so.

Q. Were you identified in any way with the association in 1893-94? A. No.

Q. Were you in '94-05? A. No, sir.

Q. In connection with your work for the Metropolitan, did you have anything to do with the association, say, in 1893-04 or 1894-05? A. I think not — I have no recollection of it.

Q. Did you have any connection or relations with it in 1895-06, when Mr. Rogers first became president? A. Yes, then I was elected secretary and treasurer.

Q. I refer to 1895-96. A. I think not, Judge. I have no recollection of ever having been at any Albany meeting.

Q. In connection with your work for the Metropolitan as solicitor or as second vice-president or as director, do you recall whether or not prior to your becoming secretary and treasurer of the association in 1896-7, you had any relations with Mr. Rogers as president of the association? A. I don't think I had, sir.

Q. In 1896-7 you were elected secretary and treasurer, were you not? A. Yes, sir.

Q. And you held that position in 1896-97, and in 1897-98 — is that correct? A. That is right.

Q. And also in 1898-99? A. That is right.

Q. And in 1899-1900? A. That is right, sir.

Q. Also in 1900, 1901? A. That is right.

Q. And in 1901-02? A. That is right.

Q. Also in 1902-03? A. That is right.

Q. When did you sever your connection with the association? A. I think in the spring of 1903.

Q. In July, was it not — do you recall? A. I do not.

Q. Did you resign? A. Yes, sir.

Q. What was the cause of your severing your connection in July, 1903 — if I have the month correct? A. Why, there was to be a change in the operations of the Metropolitan Street Railway Company, and someone else was to take the control for the interests in the road.

Q. What change was there to take place? A. The Metropolitan Securities people took hold.

Q. Didn't they take hold in 1902, in April? A. I don't think so.

Q. If I recall, that was the evidence of Mr. Vreeland, that in 1902, in April, the Metropolitan Securities Company took hold of the Metropolitan. Does that agree with your reputation? A.

Well, I don't know, Judge Bruce. I am only speaking from the operating point of view, and the accident point of view, all those details that I had connection with. It may be that the financial interests commenced before.

Q. The annual meeting of the Street Railway Association occurred in October of each year, didn't it? A. I think so.

Q. And that was when the officers were elected? A. Yea, sir.

Q. Why did you resign in July, a few months before the annual meeting when the officers would be elected? A. I haven't any reason at all, sir, particularly.

Q. You continued after that time to participate in the work of the association, and to advise with its officers, did you not? A. No, sir.

Q. Did you have any relations with it whatsoever after that time, or with any of its officers? A. I don't think so.

Q. Who succeeded you as secretary and treasurer? A. Excuse me. I think I may have helped Mr. Cole with some accounts.

Q. What accounts did you make up for Mr. Cole? A. Some of his annual statements.

Q. Did Mr. Cole succeed you as secretary and treasurer by appointment of the executive committee? A. I think so.

Q. And at the October meeting he was elected, was he not, secretary and treasurer? A. The record so states.

Q. Does that agree with your recollection? A. I haven't any recollection on the subject, Mr. Bruce.

Q. Didn't you frequently report to Mr. Cole? A. No, sir.

Q. Did Mr. Cole frequently report to you? A. Not frequently, sir.

Q. Did he sometimes? A. I think not; he may have on two or three occasions.

Q. What were the occasions on which he reported to you, that is, after your resignation? A. Well, he didn't report to me, but he asked me for information.

Q. Didn't he report to you, didn't he make reports to you of collections made by him? A. Not to my recollection.

Q. Didn't he make report to you of assessments collected by him giving you the names of the persons from whom collected, and the amounts paid, and the dates of the collections? A. I haven't any recollection of it; he may have done so, though.

Q. If he did so what was the occasion for it? A. Well, I assume because the assessments were due during my interregnum.

Q. But I understood you to say that the only occasion for your resignation was the change that occurred in the Metropolitan Street Railway? A. Yes, sir, that was the moving cause.

Q. Was there any other cause? A. None at all.

Q. That was the sole and only cause? A. That I recall; yes, sir.

Q. Does it refresh your recollection if I say that the evidence here has developed that there was to be a change of policy on the part of the association? A. No, sir.

Q. And that the old management was going out and a new management coming in? A. No, sir, I think that was after my resignation.

Q. The sole and only cause of that resignation then I understand you to say were the changes taken place in the Metropolitan? A. Yes, sir.

Q. When you resigned, your duties as secretary and treasurer cease, did they not? A. They would naturally with the resignation. I think I resigned as treasurer, possibly I continued as secretary for a while, but my mind is not clear on the subject.

Q. Why did Mr. Cole continue for a number of months after your resignation to make reports to you of amounts collected by him and the persons from whom they were collected? A. I don't know.

Q. Your whole relation with the association had ceased? A. It had.

Q. The changes in the Metropolitan had made it necessary? A. The had.

Q. And you had no further interest in the association except such interest as you might have had as an individual? A. That is all.

Q. Were you still a member of the association? A. The railway company was.

Q. But these changes in the work of the Metropolitan had occasioned your resignation. You no longer represented the railroad company in the association, did you? A. No.

Q. I call your attention to a letter or a copy of it rather,

dated September 27, 1903. Now that was some months after your resignation, was it not? A. Yes, sir.

Q. You will note that this letter, written to you by Mr. Cole, treasurer, goes on and states, "Your favor of the 26th inst. received and under separate cover I enclose the books as you suggest and would say the checks which I have received up to date are: Johnstown, Gloversville & Fonda, \$98.14. Ogdensburg Street Railroad, \$47.94; Hornellsville Street Railroad, \$26.20; Binghamton Street Railroad, \$405.26; International Railroad Co. of Buffalo, \$3,042.16; Elmira Water, Light & Railroad Co., \$321.02.

This money was deposited in the Morton Trust Company, from which they deducted \$/90, making a deposit of \$3,940.52.

On July 10th, there was deposited from Johnstown, Gloversville & Fonda Railroad, \$205.28. International Railroad Co. of Buffalo, \$3,700. Ithaca Street Railroad Co., \$159.26. Buffalo, Gardenville & Ebenezer Railroad, \$10. Auburn & Syracuse Railroad, \$168.74. This was also deposited in the Morton Trust Company.

On July 22nd, I commenced deposits with the bank with which I am doing business, and deposited remittances from the Metropolitan Street Railroad Company, account Third Avenue Railroad, \$8,000; New York and Stamford Railroad Company, \$202.56; Schenectady Railroad Company, \$584.25; Rochester Street Railroad Company, \$400; Orange County Traction Company, \$25.

The account in New York is credited with transfer of June 25, \$2,500, July 10th, \$7,500.

July 28, check was sent to the Morton Trust Company for \$586.75 on account of overdraft. The balance at the bank at the present time amounts to .” Do you recall that communication? A. No.

Q. Why was he making these communications to you after you had severed your connection with the association? A. I don't know of any other reason except that I might correct him if he made mistakes.

Q. How could you correct him if he made mistakes from collections? A. Possibly look it up.

Q. On October 1st, Mr. Cole wrote you a letter in which he says, "I did not give you the date of our last draft sent to New York, which amounted to \$8,000 on July 24. The account now stands as follows:

On June 25, I sent N. Y. draft for \$2,500, on July 10, \$7,500; these were both drawn on the Morton Trust Company. I was notified by the Trust Company of the overdraft of \$586.75, for which I sent check which leaves now under my deposit at Elmira a balance of \$625.06, for which amount I have sent draft to New York." Do you recall that communication? A. I do not recall it.

Q. What were these amounts of \$2,500 and \$7,500 and \$8,000 that he was reporting to you? A. I don't recall.

Q. Why those were large amounts, were they not, comparatively large? A. Oh, reasonably so, yes, sir.

Q. Now, you had been treasurer for four or five years, had you not? A. Yes, sir.

Q. Was it customary for amounts of that size to pass through your hands as treasurer? A. Yes, sir.

Q. For what purpose? A. Assessments, so called, contributions of the street railway companies.

Q. Assessments levied by the Street Railway Association? A. Yes, by the executive committee.

Q. Under the authority of the executive committee? A. Yes.

Q. Now, just tell me the action taken by the executive committee with regard to these assessments? A. I was directed to send out these notices to raise a certain sum, and a tabulation of the gross receipts from passengers was obtained, some clerk made up these amounts, and they were forwarded to the street railways with the amounts stated for which they were expected to send checks.

Q. Let us take the first year that you were secretary and treasurer. You became secretary and treasurer about October, did you not? That was the time of the annual meeting? A. I should say so, but I have no recollection.

Q. Now that would be, referring again to the report, that was in 1896-97. Now, do you recall when the action was taken with reference to the assessments for that year? A. I do not.

Q. How soon was it after you became secretary and treasurer?
A. I don't know.

Q. Do you recall where the executive meeting was held? A. I do not.

Q. Do you recall what the usual time of the year was when the assessments were levied? A. In the spring.

Q. In the spring? A. Yes, sir.

Q. In what month, would you say? A. Why, in June, I should think.

Q. Where were the meetings of the executive committee usually held? A. Most of them at 621 Broadway.

Q. The offices of the Metropolitan Street Railway Company? A. Yes, sir.

Q. What action, what form of action, was taken by the executive committee with reference to assessments? A. They voted that a certain sum be raised.

Q. Do you recall in the various years when you were secretary and treasurer as to what amount or percentage was levied. A. I do not. Excuse me — I remember that one-tenth of one mill has been spoken of here on several occasions, and I think they were larger on other occasions.

Q. Can you tell me now how large the largest one was that you recall? A. No, I cannot.

Q. Did you ever levy an assessment without the authority of the executive committee when you were secretary and treasurer? A. I never did.

Q. On each occasion the executive committee took executive action in regard to it? A. Yes, sir.

Q. And was a record of that action made in the minutes of the secretary of the executive committee? A. It was not.

Q. Why not? A. I suppose because it related to these political subscriptions and it was undesirable to make a record.

Q. And no record of that action on the part of the executive committee was taken at any time to your recollection? A. It was not.

Q. Well, of course you have actual knowledge in regard to it because you were the secretary, were you not? A. I was secretary, but I was not always present at the meetings.

Q. You were present at these meetings of the executive committee when the assessments were levied, were you not? A. Not the entire meeting, sometimes I came in after adjournment.

Q. But you were present at meetings of the executive committee when the assessments were levied? A. Not all of them.

Q. But you were present at times when such action was taken?

A. Yes, sir.

Q. And you, as secretary, made no record of it? A. No, sir.

Q. Did your subordinate at the meeting, who acted for you when you were not present, make any record of it? A. No, sir.

Q. Did you make any record of it, any permanent record, in the minutes of the executive committee? A. No, sir.

Q. That was designedly omitted, was it? A. It was.

Q. Do you recall, Mr. Robinson, the amount raised in any of the years during the time you were treasurer? A. I cannot state that to you.

Q. Tell me, Mr. Robinson, the largest amount that was raised in any year? A. I can only say generally, as Mr. Vreeland has told you, that the amounts varied from \$7,500 to \$25,000.

Q. Mr. Vreeland, I don't recall, gave any such evidence here. A. I think so.

Q. No, none whatever. Unfortunately you were not present. A. No, sir.

Q. And Mr. Vreeland gave no such evidence as to the amounts raised? A. That statement is in your record some place.

Q. Not from Mr. Vreeland. Have you examined the record? A. I have looked at some portions of it.

Q. From whom did you receive the record? A. I got a copy in Mr. Collins' office.

Q. Mr. Collins, who represents Mr. Rogers? A. Yes, sir.

Q. I think I will have to correct you. As far as my recollection goes Mr. Vreeland gave no evidence as to the amount raised in any one year. A. I may be mistaken, this is a large record, and I read it hastily.

Q. No, Mr. Vreeland could give us no information in regard to the actions of the executive committee. His statement was that the whole matter was left to Mr. Rogers, that the executive committee took no action. A. He is in error about that, sir.

Q. Now, Mr. Robinson, give me frankly your best recollection as to the largest amount raised in any one year by the association by these assessments for political purposes. A. Judge, I cannot do that.

Q. Give me your best recollection. A. I haven't any good recollection to give you.

Q. Give me your best estimate. A. I should say \$20,000 a year outside.

Q. That was the largest amount? A. I should say so, raised outside, the levies among the members.

Q. Now you differentiate between different things, the amount raised outside the members, and some other amounts. To what do you refer? A. The Metropolitan may have made advances which may have gone in those years, in those deposits.

Q. That is, the Metropolitan paid some years you think more than the assessment? A. Yes, sir.

Q. What years? A. I can't say now.

Q. How do you know this was done? A. Well, there is the item of twelve thousand dollars you have there, I think that was more than their assessment.

Q. You think there never was a year when the Metropolitan was assessed more than \$12,000? A. I should say so.

Q. There never was a year when it was assessed — A. Not from any statement sent out.

Q. No, not from any statement — there never was a year when the Metropolitan paid more than \$12,000 for political purposes — I will put it that way. A. They have paid more than \$12,000.

Q. How much have they paid in any one year? A. I cannot say.

Q. What is your best recollection? A. I haven't any recollection.

Q. What is your best estimate? A. I haven't any estimate.

Q. What is your best guess? A. I don't guess.

Q. What was your knowledge in regard to it? A. I haven't any recollection now.

Q. Was it as much as a hundred thousand dollars? A. I should think not.

Q. Was it \$75,000? A. I should think not.

Q. Was it \$50,000? A. I should think not.

Q. Was it as much as \$40,000? A. I think not.

Q. Was it \$30,000? A. I should think not.

Q. Mr. Vreeland testified that in one year, I think in 1903, the Metropolitan contributed \$37,000; \$20,000 to the Republican State Committee and \$17,000 to the Democratic State Committee. Would you say that he was in error about that? A. I would not.

Q. Do you think he is correct? A. Yes, sir.

Q. You said just now you didn't think it was as much as \$30,000. Would you now say it was as much as \$30,000? A. I don't think these amounts referred to by Mr. Vreeland passed through my accounts.

Q. Had you any knowledge of them? A. No, sir.

Q. None whatever? A. No, sir.

Q. Then the amounts you are speaking of are the ones that passed through your department? A. Yes, sir.

Q. They are separate and apart and independent of those to which Mr. Vreeland referred? A. I presume so.

Q. What was the largest amount that passed through your department in any one year for political purposes? A. That voucher of \$12,300 — I don't know whether those other vouchers which appear there in the record were in the same year or not.

Q. I am not asking you in regard to facts already developed. What was the largest amount that you recall passing through your hands in any one year for political purposes? A. I have a general idea that the largest was \$20,000 to \$22,000.

Q. What year would you say that was? A. I don't know, but the year in which the \$12,000 voucher was put in.

Q. What year would you say it was? A. I don't remember the year, but I think the year in which the \$12,000 voucher was put in.

Q. You think that is the year? A. Yes, sir.

Q. Well now, to depart for the present from the line of examination that I have been pursuing, the general practice of the Metropolitan, Mr. Robinson, tell me the largest amount that you collected as treasurer of the New York Street Railway Association in any one year, under assessments, which was used for political or other similar purposes? A. I haven't any recollection. I stopped in 1903 and I don't know now.

Q. You have no recollection whatsoever? A. I have no recollection at all — no dependable recollection.

Q. Did it aggregate as much as \$40,000? A. I should not say so.

Q. Did it aggregate \$35,000? A. I should say it was something around \$20,000 to \$22,000, something of that kind.

Q. From all the members of the association? A. That would be my recollection.

Q. What is your recollection based on? Merely these vouchers? A. General recollection and statements I sent out.

Q. That voucher you will recall, is only what the Metropolitan contributed; I am not asking you how much the Metropolitan paid in any year, but how much did all the members of the association contribute in any year? A. I could not say, sir.

Q. What is your best recollection? A. I haven't any good recollection.

Q. Would it be as much as \$50,000? A. I should not think so.

Q. Would it be as much as \$40,000? A. No; I should think below \$30,000.

Q. How far below \$30,000? A. I haven't any — I cannot say.

Q. The Metropolitan paid in any year how much do you think? How much more than all the other members of the association paid? A. I could not say.

Q. Did they all pay three times as much as the Metropolitan? A. I could not say.

Q. Did the Metropolitan contribute a third of the whole amount raised? A. I don't know.

Q. Do you think that would be its proper percentage? A. I don't know.

Q. What were the largest gross receipts of the Metropolitan in any one year? A. I don't know what the largest was; I have got up to \$20,000,000 in my mind.

Q. At one-tenth of one mill, what would that make? A. That is \$2,000.

Q. Now, in one year they contributed \$12,000? A. Yes, sir.

Q. That would be considerably more than their proportion, wouldn't it? A. Yes, sir.

Q. Or six times as much? A. It would.

Q. In July, 1903, Mr. Cole forwarded as secretary of the association \$25,000 to New York in that one month of June and July, 1903. Do you recall your having collected as much as that in one month, or forwarded that much? A. No, sir.

Q. That was an extraordinary year, then? A. I don't know.

Q. Did you have knowledge of those contributions? A. No, sir.

Q. That was the very year you went out? A. Yes, sir; there were some hangovers, so to speak.

Q. Did you have knowledge of those collections by Mr. Cole? A. No, sir.

Q. None whatever? A. Except his letter, that is all.

Q. That was knowledge, wasn't it? A. A statement, yes.

Q. Now, that aggregated during the months of June and July, 1903, \$25,000. Does that refresh your recollection as to whether or not in any year the collections or assessments from all the members amounted to over \$20,000? A. It would appear so, yes, sir.

Q. Frankly, Mr. Robinson, how much did it amount to in the banner year, when you were treasurer? A. I don't know.

Q. You know it was more than \$20,000 and more than \$30,000, do you not? A. No, I do not.

Q. Notwithstanding, Mr. Cole, the same month after you resigned, or the month in which you resigned, forwarded \$25,000, you still testify under oath that during the years you were there you think it aggregated about \$20,000, the largest amount? A. Yes, sir.

Q. Do you know, Mr. Cunningham? A. Yes.

Q. J. W. Cunningham? A. Yes.

Q. When did you first become acquainted with him? A. Oh, I think the early part of 1900, or 1901, when Mr. Rogers became the special partner in one of the firms.

Q. What were the circumstances of your acquaintance with him? A. I haven't any recollection.

Q. Have you been intimately acquainted with him ever since? A. More or less so, yes.

Q. When you were treasurer of the Street Railway Associations where did you keep your funds? A. In the Morton Trust Company and the Guarantee Trust Company.

Q. Any other? A. I think not.

Q. Did you keep any funds in the Pacific Bank? A. Yes, sir.

Q. Any other? A. I have no recollection of any others.

Q. Did you keep any funds in the National Bank of Commerce?
A. I had an account there, but I would not say whether these funds went in it or not.

Q. Did you also have a special account in the Guarantee Trust Company? A. I have two accounts there, yes, sir.

Q. How were they designated? A. One was called special, as I recall it, and the other not.

Q. What was the other called? A. Just Henry A. Robinson.

Q. Did you also have a special account in the Morton Trust Company? A. I did.

Q. What were these special accounts? A. They were accounts in which I kept money relating particularly to the business — rather to differentiate it from my household expenses.

Q. What do you mean by moneys relating to business? A. If I was a referee in foreclosure I would run the foreclosure amounts through the special account, and used it as a general fund.

Q. Did you ever deposit in any of these special accounts any moneys which had been collected by the Street Railway Association? A. I think so.

Q. Why did you deposit them in these special accounts? A. Well, no particular reason.

Q. There must have been some reason; you had an account as treasurer of the association, did you not, in the Morton Trust Company, and the Guarantee Trust Company? A. I think not; I think in the Morton Trust Company, not in the Guarantee Trust Company.

Q. Well, having these accounts as treasurer of the association, why did you deposit funds of the association in special accounts? A. Because these assessments were made for political contributions, and it was desirable to keep them apart from the regular dues which came from the members.

Q. Why desirable? A. So you would keep them off the association's regular books.

Q. Why did you wish to keep them off the association's regular books? A. Because I understood them to be political contributions.

Q. Was it done, Mr. Robinson, for the purpose of secreting them? A. No, sir.

Q. Was it done for the purpose of making it difficult to trace them? A. No, sir.

Q. Then why was it done? If it was regular business of the association, why were not the funds deposited free and open in the bank account of the association in its treasury, instead of being deposited by him, who was yourself, in the special account? A. They were deposited in the special account so that I could draw against it in favor of Mr. Rogers.

Q. You could draw against the regular account in favor of Mr. Rogers, he was the president? A. It would be undesirable.

Q. Why would it be undesirable? A. Because the members would not wish it done.

Q. Why not? A. I don't know; they so stated. I think it is undesirable from any point of view to publish your political subscriptions.

Q. You are coming back to the question I asked you; it was done for the purpose of not having the political business of the association mixed up with its regular business, wasn't that it? A. Yes.

Q. It was done so that the amount of the funds could not be readily traced, was it not? A. It was not.

Q. Coming back to the Morton Trust Company; as a matter of fact did the association have any regular account with the Morton Trust Company when you were treasurer? A. I do not recollect.

Q. Is it not a fact that you had an account there of your own, a special account? A. That is true.

Q. And were not all these contributions and assessments for political purposes put into the special account? A. I think so; I am not sure.

Q. And the others put in your regular account? A. I think so.

Q. And was not every cent that went into your special account in the Morton Trust Company association money? A. I do not think so, Judge.

Q. What is your best recollection? A. I should say not; most of it was —

Q. What percentage would you say? A. I could not say; I may have run through other checks in large amounts, four or five thousands dollars.

Q. What books did you keep as treasurer of the association? A. A money ledger was kept; I think that is all.

Q. Didn't you keep regular books as treasurer of the association? A. Only that general treasurer's account.

Q. And in that general treasurer's account did you put down all these assessments and payments made? A. I did not.

Q. They were not entered in the book at all? A. No, sir.

Q. Why not? A. Because being of a political nature we desired to keep a separate memorandum.

Q. Desirable to put them in a special account? A. Yes, sir.

Q. I show you a copy of your special account in the Morton Trust Company and ask you to point to items that went in there that were not moneys of the association? A. It would be absolutely impossible for me to do so.

Q. Will you look it over and see if it is impossible or not? A. Yes, sir. There is nothing in the ink copy of the figures which indicates to my mind. It would be absolutely impossible for me to tell.

Q. Point me out a single item there that in your judgment now were not funds of the association? A. \$50, \$10, \$1.30, \$4.16.

Q. Do you see any others? A. I cannot recognize them.

Q. Why are they not association dues? Didn't they pay dues as low as \$50 and \$10? A. Yes, but they did not go in this account.

Q. Why not? A. Because they went in the regular account of the members.

Q. Now, do you see any others? A. I couldn't tell.

Q. Look it over carefully. A. I could not tell.

Q. Look back again, and see if the amounts you have named are not drafts, amounts drawn out and not deposited? A. These are drafts, except the \$4.16.

Q. That is probably an interest credit, isn't it? A. Yes, sir.

Q. Look over your credits there, not referring to what you drew out, but what you put in, and show me a single item there

that does not represent funds of the association? A. I should say the \$1,435.28 did not.

Q. What do you think that represents? A. Paid.

Q. What do you mean, paid? A. Salary check of the Metropolitan Street Railroad, and possibly a little something else.

Q. What others? A. I could not tell.

Q. Look at the others, and see if there are any others. A. \$1,251.73, I think that is a salary check; I should say \$173.38 was besides a check.

Q. Why did you deposit your salary checks and your payment of fees as attorney in this special account, and not in your regular account? A. I don't know.

Q. You had at that time a regular account with the Morton Trust Company; why were these matters deposited in a special account? A. I don't know; the account switched one from the other; I could not tell the reason.

Q. Mr. Robinson, will you swear that these are salaries and not funds that belonged to the association, or personal items, or is that only a supposition? A. That is my belief.

Q. And can you give me any reason why you would be depositing your regular personal funds not in your personal account, but in your special account, with the funds of this association? A. I cannot tell now, but I know they were mixed up; they were both united together.

Q. Why were they mixed up? A. I don't know.

Q. There must have been some reason for it; this is not so long ago. You are an attorney and counselor at law and a business man, second vice-president of a great railroad system; why this method of doing your banking? A. No particular reason.

Q. I know, but that does not inform this Committee, Mr. Robinson, they cannot accept an answer like that from a man of your experience, no particular reason, you don't know. We have had a number of witnesses, don't know, that has been the sum total of their evidence. This Committee is made up of intelligent men. You are an intelligent man, an educated man, a man of large experience and affairs, a member of the bar of the State of New York. Tell me why in keeping your bank account you mixed with the funds of this association collected by

assessment, your own personal funds, instead of depositing them in your personal account, having the two accounts in the same banking institution? A. I have no explanation for it except that some of these assessment vouchers came to me personally and some of them were endorsed as treasurer, and they were just thrown in, the account was there, without consideration.

Q. Why did they come to you personally? A. I don't know why; they drew them that way.

Q. Why didn't they draw them to you as treasurer? A. I don't know.

Q. Haven't you any reason why they should draw a check to you personally and not as treasurer, when the payment was being made for the purposes of the association? A. No, sir.

Q. But that does not explain, Mr. Robinson, to go back again, why your salary check and other checks were deposited in this special account and not in your regular account? A. I can give you no further explanation, Judge.

Q. Now, I have referred to several banks, refreshing your recollection, in which you said you had accounts. Now, did you have any other accounts in any other banks or trust companies? A. The Pacific, Morton, Guaranty.

Q. The National Bank of Commerce? A. National Bank of Commerce.

Q. What others? A. National Union, I think.

Q. What others? A. I do not think of any others, Judge, unless it was the predecessor of the National Union.

Q. You think of no others whatsoever? A. No, sir.

Q. Now, what were these accounts in the various companies; we have taken up the ones in the Morton Trust Company; now, let us take up the ones in the Guaranty Trust Company; what accounts did you have there? A. I think there were two, my own and a special account.

Q. Why a special account? A. It was to keep moneys in that came in.

Q. What moneys? A. Other than household expenses.

Q. Funds of the association? A. Yes, sir.

Q. Into this special account did you also deposit your salary checks and personal funds? A. I haven't any recollection of it, but I would not be surprised.

Q. Why did you commingle them in the Guaranty Trust Company, as you did in the Morton Trust Company, and not deposit them in your regular account with the Guaranty Trust Company?

A. I could not say. I think I started in the Trust Company and then moved over to the Morton Trust Company, and the same system that was in the Guaranty Trust Company went into the Morton Trust Company.

Q. While you had your accounts in the Morton Trust Company, didn't you also carry your account active in the Guaranty Trust Company? A. I don't think so; I have no recollection.

Q. You think you discontinued your account with the Guaranty Trust Company, when you opened your account with the Morton Trust Company? A. Substantially.

Q. I think the transcript of your account shows the fact to be the contrary; would that accord with your recollection, being refreshed in that way; I show you a copy of each of your accounts; when did your account with the Guaranty Trust Company start? A. This says September, 1903.

Q. When did your account with the Morton Trust Company start? A. April 2nd, 1901.

Q. Then your account with the Guaranty Trust Company did not start until two years, after your account with the Morton Trust Company started? A. I think they were started before this; I do not think you have got the whole account.

Q. This is what has been furnished here by the Guaranty Trust Company, and by the Morton Trust Company, as a full transcript of your account, of the special account, of course; I am speaking now of the special account. A. I had accounts in the Guaranty Trust Company, I am quite sure, long before that.

Q. I am referring to the special account into which went the funds of the association; you will note there that the special account in the Guaranty Trust Company did not open until two years after your special account was opened in the Morton Trust Company; isn't that correct? A. It so states.

Q. Why did you carry these two special accounts in these two different institutions? A. For no particular reason, Judge.

Q. There must have been some reason; it was not a mere mat-

ter of accident, was it? A. I do not recollect it; it may be I had a friend in one and did not have in the other.

Q. Not what it may be; what was it, to your best recollection?
A. I have no recollection.

Q. Take the Pacific Bank; did you have two accounts there?
A. I think not.

Q. When did you open your account in the Pacific Bank, do you remember? A. I think it was opened by some one else and given to me; that is my recollection.

Q. Who opened it? A. I don't know; some one of the former treasurers, I think.

Q. Of the association? A. Yes; I think the Pacific account was turned over to me.

Q. Then that was purely an association account, wasn't it?
A. Yes, sir; I would not be sure, though.

Q. You had no personal account there? A. No, sir.

Q. And no special account in which your personal funds went?
A. No, sir.

Q. That was purely an association account? A. Yes, sir; the Metropolitan had coupons at the Pacific Bank, or something of that kind.

Q. Do you mean the treasurer of the association, or the treasurer of the Metropolitan? A. Treasurer of the association, that account was, but the Pacific Bank did a lot of work for the Metropolitan, and that of course possibly took me there with that account.

Q. Then did you as treasurer open this account in the Pacific Bank? A. I cannot recall about that.

Q. All the funds that went into that account were association funds, were they? A. Yes, sir.

Q. Coming now to the Bank of Commerce, what accounts did you have there? A. I think only one, sir.

Q. One account? A. Yes, sir.

Q. When was that account opened? A. I could not say, sir.

Q. You can not tell us when the account was opened? A. I could not say.

Q. Do you recall the circumstances of its opening? A. I do not recall.

Q. You do not recall anything about it? A. No, sir.

Q. Was that special account a general account or an association account? A. I do not recall.

Q. Have no recollection of it whatsoever? A. None at all.

Q. Wasn't it in fact an association account? A. I do not recollect.

Q. Can't you recollect, you as treasurer of this association, handling \$20,000 and more a year, as you testified here, where your accounts were? A. No, sir. They were in these banks.

Q. Coming to the National Bank of Commerce; did you do your personal business or association business there? A. I think I did both, sir.

Q. You think you did both? A. Yes, sir.

Q. Now, I show you two checks drawn by Mr. Vreeland to the Street Railway Association, one of three thousand and the other of six thousand, bearing your endorsement, on the National Bank of Commerce? A. Yes, sir.

Q. Does that refresh your recollection? A. As to what?

Q. As to whether or not your account in the National Bank of Commerce was an association account? A. It would appear so, from this. No, it does not refresh my recollection. The stamp which is on the checks, it indicates —

Q. You deposited association funds in your account in the Bank of Commerce? A. Yes, sir.

Q. Was your account in the Bank of Commerce then an association account? A. I don't recollect.

Q. With the checks before you bearing your signature for deposit, what would your best recollection be? A. It would be that it was.

Q. Well, there is not much doubt about it? A. I should think not, Judge. I haven't any recollection.

Q. Why is it that your recollection, Mr. Robinson, about these matters and these transactions will not be refreshed until I place before you the absolute incontrovertible proof in your own handwriting, and then, it is reluctantly said, well, I presume that is so? Is there any reason why you should not be perfectly frank about it? A. Not at all, Judge. There is so many of them, and I pass so much money through my hands, that I don't recollect accurately.

Q. Now, to summarize what we have finally demonstrated, you had two accounts in the Morton Trust Company? A. Yes, sir.

Q. One of which was an association account, is that correct? A. I don't say so.

Q. What do you say now about the Morton Trust Company. Let us go back. A. My only recollection about the Morton Trust Company is special account and individual account. I don't recollect an association account in the Morton Trust.

Q. You had an account in the Morton Trust Company in which you deposited association money? A. That is right.

Q. Does that differentiate what you have in mind? A. Yes, sir.

Q. Let us go to the Guaranty Company. You had there a personal account and special account? A. I had.

Q. And in that special account went the association funds? A. I believe so.

Q. Now let us go to the Pacific Bank. You had there an account? A. I did.

Q. Into which went association funds? A. Yes.

Q. That was in fact purely an association account? A. It was.

Q. Now you had also in the National Bank of Commerce a special account and into which went the association funds? A. I don't recollect, Judge. I should have said so, but you produced a check showing the Street Railway Association on the back of it, which would indicate to my mind that there was another account there.

Q. I am asking you, in the National Bank of Commerce, if you did not have an account in which were deposited the funds of the association? A. Oh, yes; that's true.

Q. Then we have the four institutions into which the funds of the association went—the Morton Trust, National Bank of Commerce, Guaranty Trust and Pacific Bank? A. Yes, sir.

Q. Were there any others? A. I don't think so.

Q. Are you quite certain? A. Yes.

Q. At any time when you were treasurer? A. Yes, sir.

Q. You think those four institutions are the only ones? A. Yes, sir.

Q. Why is your recollection so positive as to that, when it was

so vague as to having accounts in these banks? A. I cannot tell you that, but those are the only banks I recollect of having association with.

Q. When did you become treasurer of the association? A. In 1896 I think, Judge.

Q. Well now, our transcripts of these accounts concerning which I have been examining you, none of them precede 1900. What did you do with the money from 1896 to 1900, where did it go? A. I think it went to some of those banks.

Q. The transcripts of the accounts which we have here do not antedate 1900. I might say frankly that possibly I did not ask for the account back of 1900. It might have been my mistake? A. That might be, yes, sir.

Q. Now this association had two sources of income, did it not, the dues and the assessments? A. Yes, sir.

Q. The dues in any event did not exceed with any one company \$600, did it? A. That is the highest.

Q. The moneys which you collected for dues, where were they deposited? A. In the Pacific Bank, I believe.

Q. All in the Pacific Bank? A. I think so.

Q. None of them in any other bank? A. No, sir.

Q. The moneys that you received from assessments, were they deposited in any particular bank? A. Yes. The Morton Trust, Guaranty Trust, and apparently some in the Bank of Commerce.

Q. Did any of those go into the Pacific Bank? A. No, sir, they didn't.

Q. They were only dues? A. Yes, sir.

Q. Then whatever deposits were made in the Pacific Bank represented the dues collected? A. Yes, sir, they did.

Q. And that was purely an association account? A. Yes, sir.

Q. How many members did your association have when you first became treasurer of it? A. Oh, I could not say, Judge.

Q. How many would you estimate? A. Oh, thirty or forty.

Q. Twenty or forty? A. Yes, sir.

Q. And what was the gross amount of the dues, of the income collected from dues? A. Oh, I could not say. There was some change in the course of my office and I could not state.

Q. About how much? A. I could not say.

Q. The largest amount in any one year when you were treasurer? A. I could not say without consulting those records.

Q. What records? A. The reports, annual reports of the Street Railway Association.

Q. You mean, reports for each particular year? A. Yes, sir.

Q. Mr. Cole, who was your successor, if I recall his testimony correctly, testified that in no one year did it exceed \$8,000. Does that bear out your recollection? A. It does.

Q. About \$8,000 in any one year? A. Yes, sir.

Q. Now that being true, now looking at the transcript of the account in the Pacific Bank in the month of January, 1900 — you say this account represents solely dues — I find deposits aggregating \$12,000 in that month. Now if the dues during any one year did not exceed \$8,000, how do you account for that deposit of \$12,000 in one month? A. I could not, Judge.

Q. Isn't it a fact, Mr. Robinson, that the Pacific Bank got assessments as well as dues? A. I don't recollect it, Judge, if it did. My recollection is that it did not.

Q. With your account before you — now look over it again, take a little time, don't testify hastily — look over it carefully and see if your recollection is not refreshed to the effect that assessments as well as dues went into the Pacific Bank? A. Yes, you are quite right.

Q. Now the month of January, your net deposits were \$11,807.14, were they not? A. The statement so shows, yes, sir.

Q. In the month of February your net deposits were \$12,312.45, were they not? A. Yes, sir.

Q. In March your net deposits were \$15,087.42, were they not? A. Yes, sir.

Q. And in the month of April your net deposits were \$14,277.25? A. Yes, sir.

Q. And in May your net deposits were \$16,281.96? A. Yes, sir.

Q. And in June your net deposits were \$16,259.28? A. Yes, sir.

Q. And in July your net deposits were \$9,888.89? A. Yes, sir.

Q. And in August your net deposits were \$2,004.73? A. Yes.

Q. And in September your net deposits were \$6,668.89? A. Yes.

Q. And in October your net deposits were \$16,424.24? A. Yes.

Q. And in November \$18,382.41? A. Yes.

Q. And in December \$21,540.50? A. Yes.

Q. Making during the twelve months \$160,753.14, is it not? A. That's right, sir.

Q. So during the year 1900 there was deposited in the Pacific Bank that amount \$160,753.14? A. There was.

Q. Is that correct? A. That's right, sir.

Chairman MERRITT: The Committee will stand in recess until 2 o'clock.

Recess until 2 o'clock.

AFTER RECESS.

2 P. M.

Chairman MERRITT: The Committee will come to order.

HENRY A. ROBINSON, examination resumed.

By Judge BRUCE:

Q. Now Mr. Robinson, you testified that your account with the Pacific Bank was an association account. First, that the moneys deposited in there were only collections from dues. Subsequently, having shown you the two vouchers for the six thousand and the three thousand, you testified that there were also assessments deposited there. Now this total aggregate of the amount deposited, amounting to over \$160,000, did that represent the assessments and dues for the year 1900? A. Judge, I neglected and forgot for the moment that that was an account carried in my own name, which was the legal disbursements of the Metropolitan Street Railroad Company, expenses of witnesses, time and so on all carried in my name, and there is no Street Railway Association money in that account at all.

Q. Then you wish to correct your testimony? A. I wish to correct my testimony and say that there were two accounts in the Pacific Bank.

Q. You mean, two separate accounts? A. Yes, sir. The regular account of the Street Railway Association, and this Henry A. Robinson account, which was a Metropolitan Street Railway account, out of which disbursements were paid.

Q. Was the account which you had in the Pacific Bank for the association in your name as treasurer of the association? A. I think it is in the name of the Street Railway Association of the State of New York.

Q. In the name of the association? A. Yes, sir, and this one year in the name of Henry A. Robinson.

Q. What has refreshed your recollection? A. Why, it is my recollection. My recollection is refreshed as to the other account in my own name individually by the production of those figures you have.

Q. Well, if those amounts were payments on account of the Metropolitan Street Railway Company, why was it in your name personally? A. Oh, for years, I carried all those disbursements in my name, of the Metropolitan.

Q. Why? A. I don't know any reason. The money was turned over to me individually, and I drew the checks. It saved making so many vouchers — really a short cut to get clear of clerical work. That is the way it started.

Q. These deposits then and withdrawals which appear in this account which has been placed in evidence, were the disbursements made by you on behalf of the Metropolitan Street Railway Company? A. Yes, sir.

Q. For what purpose? A. Legal matters connected with the trial of accident cases.

Q. And did that occur in 1900, \$160,000? A. Well, it has amounted to more than that. You say, \$160,000 in that year, I believe, but it used to go up to two hundred and two hundred and thirty, and has gone to 400,000.

Q. For witness fees alone? A. Time of the conductors, witness fees and all that.

Q. Time of the conductors? What do you mean? A. When the conductors come down to testify from the road, their time is paid out of the legal account instead of as conductor.

Q. Are there any lawyers fees in here? A. There may be some small ones.

Q. What ones? A. Well, maybe expenses.

Q. Why would small lawyers come in here? A. I did not mean small lawyers, but small payments.

Q. Why should small payments come in here and not all payments to lawyers? A. If the lawyers sent a bill — we usually got a bill from him — if the lawyer said he had \$50 cost, we would draw a check and charge to his account.

Q. That was not for fees? A. Well, disbursements.

Q. Well, this \$160,000 in 1900 represented payments of the Metropolitan for witness's fees, detective hire, and disbursement of attorneys? A. Yes, sir.

Q. And does not include payment of judgments or settlement of cases, or payment of lawyers' or attorneys' fees? A. I would not say about that, but what there was some judgments in it, but I think not.

Q. Why was that account of the Metropolitan to go on forever therefore, and carried in your name personally? A. It started in my name.

Q. Why did it start in your name? A. I don't know.

Q. There must have been some reason — a matter of \$160,000 in one year — there is some reason why it was started in your account and not the name of the Metropolitan? A. Not the slightest. When we started in 1903 upon 50th street, it was started in my name. We started paying fifty or \$100,000 a year, and it grows to this large sum.

Q. Going back again, where were the assessments and the income of this Street Railway Association deposited in 1900, where do we find it? A. The regular dues went into the Pacific Bank, I believe.

Q. Well, "I believe?" Did they or did they not? A. They did.

Q. In under what name? A. The Street Railway Association of the State of New York.

Q. Where did the assessments go? A. The assessments went into the Morton Trust Company, or the Guaranty Trust Company, or the Bank of Commerce, whichever account existed that year.

Q. Any other place? A. Possibly the National Union Bank. I don't know.

Q. Any other? A. No.

Q. Now then, before 1900, where did they go? A. Went into some of the same institutions.

Q. Any others? A. None at all.

Q. Well now, I understand you as a finality to say, that ever since you were treasurer, or during the entire time, whether you were treasurer, we will find in one of those institutions you have mentioned all the receipts of the association, whether assessments or dues? A. Yes.

Q. Is that correct? A. That is quite correct. I believe that to be perfectly accurate, sir.

Q. Now you said that when you were treasurer you did not keep any books showing the receipts with assessments? A. No, sir.

Q. And consequently when you ceased to be treasurer you turned over no such books to your successor? A. Quite right, sir.

Q. You did, however, keep a book showing receipts from dues? A. I did, sir.

Q. Were you acquainted with many members of the Legislature during the time you were identified with the association as an officer? A. I should say not, sir.

Q. Did you know Mr. Bedell? A. I did.

Q. When did you first become acquainted with him? A. I could not tell you.

Q. Did you know that he was chairman of the Committee on Railroads in the Assembly? A. I did.

Q. And also a member of the Committee on Rules? A. I did not.

Q. Did you know Mr. Goodsell? A. I did.

Q. Did you know that he was a member of the Railroad Committee in the Senate? A. I did.

Q. Did you know Mr. Nixon? A. I did not.

Q. Did you know Mr. Malby? A. I did not.

Q. Did you know Mr. J. T. Rogers? A. Slightly.

Q. Did you know Mr. Allds? A. I did not.

Q. Did you know Mr. Baxter? A. I did not.

Q. Did you know that Mr. Nixon was the Speaker in the Assembly then, though you didn't know him personally? A. I

did. I think I was introduced to him once, and said, how do you do.

Q. Did you know that Mr. Baxter was a clerk in the Assembly even though you might not have known him personally? A. I knew he had some position there — I have forgotten whether it was clerk or not.

Q. Did you know that J. T. Rogers was a member of the Committee on Railroads in the Assembly? A. No, sir.

Q. You said you knew him slightly? A. I knew he was a member of a committee — I have forgotten whether it was Railroads or not, Judge.

Q. Did you ever have any business relations with any of the men I have mentioned? A. No, sir.

Q. I will mention them again. Mr. Bedell, Mr. Nixon, Mr. Goodsell, Mr. Malby, Mr. J. T. Rogers, Mr. Allds, and Mr. Baxter? A. No, sir.

Q. You never had any business relations with them? A. None at all.

Q. Did you ever pay any one of these men any money? A. No, sir, I did not.

Q. Directly or indirectly? A. No, sir.

Q. Did you ever pay any member of the Legislature of either House, or employe, any money directly or indirectly during your term of office? A. No, sir.

Q. As secretary and treasurer of this association? A. I did not.

Q. Did you ever send to any one of these men at any time any checks or money? A. No, sir, I think not.

Q. Did you ever deliver to Tracy Rogers any money, checks or drafts, for the purpose of being credited to the account or delivered to any one of the men I have mentioned? A. I never did.

Q. Or any member of the Legislature? A. No, sir.

Q. Or employe thereof? A. I never did.

Q. Did you ever send to the firm of Ellingwood & Cunningham or to any member of the firm any moneys by check, draft, or deposit, to be credited to the account of any of the men whose names I have mentioned? A. I did not.

Q. Did you from time to time transfer money from this account

where the funds of the association were kept to the firm of Ellingwood & Cunningham? A. I did not.

Q. Did you transfer any moneys to them between 1899 and 1905? A. I did not, sir, to my best recollection. Let me say this, Judge Bruce, that I bought some bonds of Ellingwood & Cunningham, and paid them a personal check — Metropolitan Street Railway bonds.

Q. How large an amount? A. Ten hundred.

Q. One thousand dollar bonds? A. Yes.

Q. Now it appears from the evidence here that during the years 1900, 1901 and 1902, when you were the treasurer of this association that there was transferred from the funds of the association to the firm of Ellingwood & Cunningham funds as follows — not only transferred from the funds of the association, but checks from you direct to Ellingwood & Cunningham. May 16th, 3,000? A. Does it appear direct to Ellingwood & Cunningham?

Q. Yes. They were drawn to Rogers and deposited by him with the firm of Ellingwood & Cunningham. On May 16th, 1900, \$3,000; May 22, 1900, \$5,000; November 10, 1900, \$500; November 14, 1900, \$1,000; December 21, 1900, \$500; September 13, 1901, \$1,000; November 4, 1901, \$2,800; May 16, 1902, \$500; July 17th, 1902, \$2,000; July 11th, 1902, \$200; October 27th, 1902, \$3,000; November 3rd, 1902, \$2,000; making in the aggregate \$21,500. Do you recall those transactions? A. Judge, will you permit me to say that under the orders of the executive committee I was directed to turn these moneys over to G. Tracy Rogers, and I drew checks to Mr. G. Tracy Rogers' order in almost every case for those moneys, and don't know otherwise where it went to. It may be on one occasion, when Mr. Rogers was going up to Buffalo on a Friday, he asked me to make a check to the order of Ellingwood & Cunningham on that account.

Q. For how much? A. I don't recollect.

Q. Well, your best recollection? A. I don't recollect.

Q. For what purpose? A. Because he was going away, and so they could deposit the money to his account in his absence from the city.

Q. Now just give us the action of the executive committee a little more definitely. What was the action and when was it taken,

do you recall? A. Why, no. It was back in 1896 and 1897, and always continued the same way.

Q. Was the action taken each year by the executive committee?

A. The action fixing the amount was taken each year.

Q. That is, the amount of the assessment? A. Yes, sir.

Q. And you were directed by the executive committee to turn this money over to Rogers? A. Yes, sir.

Q. For what purpose? A. That is their direction.

Q. For what purpose? A. I could not say what they had in their minds.

Q. Well, what did you have in yours? A. I supposed it was for political contributions.

Q. Didn't you know that it was? A. I did not.

Q. Did Mr. Rogers say what he was going to do with it? A. Sometimes he did.

Q. What did he say? A. He said he was going to use it for political purposes.

Q. Did he say in what way? A. He did not, except once.

Q. When was that? A. One of these fall checks, I think it was, Mr. Rogers said he wanted to use it up in the country to help some committees.

Q. Do you remember what year? A. I do not.

Q. What part of the country? A. He did not say.

Q. To help what individuals? A. He did not say.

Q. Did not he mention the individuals? A. No, sir.

Q. Or the county? A. No.

Q. Or the party? A. No.

Q. Don't you recall the year? A. No, sir.

Q. What was the amount? A. I don't remember.

Q. What was the month? A. I don't remember. Well, excuse me,— I think it was sometime before election. It may have been the early part of November or October.

Q. Do you recall what year? A. No, sir.

Q. Do you recall sending Mr. Rogers \$3,000 October 27th, 1902? A. No, sir, I do not.

Q. No recollection whatsoever? A. No, sir.

Q. Well, at the meeting of the executive committee held subsequent to the meeting in which this direction was given, did Mr.

Rogers make a report to the executive committee? A. I did not hear him, sir.

Q. Did you ever hear him make a report? A. No, sir.

Q. Did you ever hear him make a statement? A. No, sir.

Q. Did you ever hear him make any statement to the executive committee relative to what he had done with this money? A. No, sir.

Q. Or what had been accomplished? A. No, sir.

Q. Did he make any statement to you? A. He did not.

Q. Did you make any inquiries? A. I did not.

Q. Did the executive committee make any inquiries? A. I don't know.

Q. Did you hear them make any? A. I did not.

Q. Mr. Vreeland testified that the matter was never taken up at the meetings of the executive committee. You think in that respect that he is wrong? A. I think he has made a mistake.

Q. I show you the copy of a letter written to you by Mr. Cunningham dated October 27th, 1902:

"MR. H. A. ROBINSON,
621 Broadway.

DEAR SIR:

Beg to acknowledge receipt of your check this day for \$3,000 which I have passed to the credit of our mutual friend."

Who was our mutual friend? A. G. Tracy Rogers.

Q. When you paid money to Rogers, why did not you send it to him direct, why did you send it to the firm of Ellingwood & Cunningham? A. I think I did send it to him.

Q. This seems to have been sent to Ellingwood & Cunningham and acknowledged by them? No, sir, I think that is merely the acknowledgment of a check which Mr. Rogers probably gave them to deposit to his account.

Q. It says, "Beg to acknowledge receipt of your check this day for \$3,000 which I have passed to the credit of our mutual friend." Would not that indicate that it was drawn to the firm of Ellingwood & Cunningham and by them endorsed to G. Tracy Rogers? A. It would not.

Q. "Which I have passed to the credit"— A. No, sir.

Q. What is your recollection in regard to the transaction? A. I haven't any.

Q. What was this money for? A. I don't know.

Q. What was Rogers to do with it, did you know? A. I did not know.

Q. Do you know what he did do with it? A. I do not.

Q. Do you know why he requested it to be sent to him? A. I do not.

Q. Did he request it to be sent to him? A. I think he did.

Q. What did he say when he requested it? A. I don't remember this specifically, but he used to ask, if there was any money in the account, and I would tell him how much there was, and he would say, please send me a check for a certain sum.

Q. What is your recollection as to what he said in regard to this particular check? A. I have not any recollection in regard to that particular check.

Q. I show you another letter under date of November 1st, 1902, written to you by Mr. Cunningham: "Mr. H. Robinson, 621 Broadway, New York City. Beg to acknowledge the receipt of your check for \$500, special account, which we pass to the credit of our mutual friend." Who was our mutual friend there? A. G. Tracy Rogers.

Q. Why did you refer to special account? A. Because the check was drawn on the special account, I suppose.

Q. Was that check drawn to the order of Rogers or the order of Ellingwood & Cunningham? A. I believe to the order of Rogers.

Q. Is that a matter of recollection or mere inference on your part? A. A mere inference.

Q. Did not you know that the \$3,000 which you sent to Mr. Rogers on the date to which I have called your attention was to be passed to the credit of Mr. Bedell, the chairman of the Committee on Railroads in the Assembly? A. I did not.

Q. Did he ever say to you that that was what was to be done with it? A. He never did.

Q. Did you know that this check went directly from Rogers' account to the credit of Louis Bedell? A. I did not.

Q. Do you know that this check went directly through Rogers' account to the credit of Louis Bedell? A. I do not.

Q. Whose money was it that you sent, the \$3,000? A. Street Railway Association's money.

Q. What account was it drawn on? A. I should say it was the special account if the letter is right.

Q. And the bank account, what bank account does that refer to? A. The Morton Trust Company, I suppose.

Q. Why do you say you suppose the Morton Trust Company? A. I think the Morton Trust Company was getting the money about that time. My recollection is not clear on it, though.

Q. Wasn't it possibly drawn on the Pacific Bank? A. I think not.

Q. Why have you such a definite recollection in regard to this \$3,000, when your recollection in regard to these accounts this forenoon was so absolutely indefinite? A. I haven't any definite recollection about the \$3,000 except the Pacific Bank I know — I know that no street railway money was put into this account.

Q. Into the Pacific Bank account? A. Yes.

Q. Didn't you tell me that you had an account there of the association? A. Yes; the regular dues were there; it was not put in the H. A. Robinson account.

Q. For whom was this \$500 that you sent to Messrs. Ellingwood & Cunningham on the date which I have just mentioned to you? A. I don't know.

Q. Do you know what was done with it? A. I don't know.

Q. Did you inquire? A. No, sir.

Q. Of Mr. Rogers? A. No, sir.

Q. Did you send it to him at his special request? A. He asked me for it.

Q. Didn't you know at the time that this money was to be passed to the credit of one of the members of the Legislature? A. I did not.

Q. What did you assume in your mind at that time that Mr. Rogers was doing with this money? A. I did not assume.

Q. It did not occur to you to make any assumption whatever? A. No, sir, at that time it did not.

Q. You said this money was being used by Mr. Rogers for

political purposes; did Mr. Rogers state that he thought it was necessary to use money for political purposes? A. Not to me.

Q. Did he ever to the executive committee? A. I never heard him.

Q. On whose initiative or at whose suggestion were these assessments at first raised? A. I don't know, Judge; I could not tell.

Q. Well, now, take the first year that you recall when you were treasurer, what was said; give us in substance what was said at the meeting of the executive committee in regard to the raising of these assessments? A. It would be absolutely impossible for me to do so, Judge.

Q. Didn't some one say that it was a good thing, it ought to be done? A. I did not hear him.

Q. Didn't any one say why it was a good thing, and why it ought to be done? A. I haven't any recollection of any one having said it.

Q. One of the witnesses here testified that Mr. Rogers stated that it was a good thing to do, and ought to be done, do you recall that? A. No, sir.

Q. Didn't it excite some curiosity on your part that these assessments were being made and this money paid over to Rogers? A. None at all.

Q. Why did you think it was necessary for the Metropolitan to contribute a fund like this for political purposes? A. I did not pass on that subject; Mr. Vreeland had charge of it and he was the factor in the situation.

Q. What did he say about it? A. I did not say anything to Mr. Vreeland; he did not say anything to me about it.

Q. Nothing whatsoever? A. No.

Q. Wasn't anything said by Mr. Rogers at any of the meetings of the executive committee as to whether the method should be continued, and the fruits of it, and what had been accomplished by it? A. I did not hear it.

Q. Was he ever asked by any member of the executive committee how much he had expended, or what he had done with it? A. Not to my knowledge.

Q. Was the effect of legislation and the legislation which had been passed, and that which had been defeated, discussed in the executive committee? A. I don't know of it.

Q. What is your recollection in regard to it? A. I never heard it.

Q. Never was discussed? A. No.

Q. Did you know that in the spring of 1900 there was a bill pending in the Legislature which affected the rights and charter of the New York Transportation Company? A. I did.

Q. Who introduced the bill? A. I don't know.

Q. What was your information with regard to it? A. I received the legislative news from Albany in the morning that a stage bill of that character had been introduced; that is the first I knew of it.

Q. Then what did you do? A. I saw Mr. Vreeland about it and said a stage bill was introduced, and if he wanted me to do anything about it to let me know.

Q. What did he say? A. He said all right, he would.

Q. When did he let you know? A. He didn't let me know.

Q. What else did you do further in regard to it? A. Nothing.

Q. Did you watch its course through the Legislature? A. I did not.

Q. Did you know the bill passed? A. Yes, I did, when it got before Governor Roosevelt.

Q. Did you know it happened before the Legislature adjourned? A. No.

Q. Did you know before the Legislature adjourned that it had passed; did you? A. I could not recall it.

Q. What brought it to your attention that it was pending before the Executive? A. I read it in the newspapers, I think, that he would give a hearing.

Q. Did you say anything to Mr. Vreeland about it? A. No, sir.

Q. Did you ever discuss it with him again? A. No, sir.

Q. Did you ever discuss it with Mr. Rogers? A. Never did.

Q. Did you ever discuss it with Mr. Goodsell? A. No, never did.

Q. Or Mr. Bedell? A. No, neither one of them; it was a stage matter, an independent corporation which we had nothing whatever to do with, at least I didn't.

Q. Were you ever connected with the New York Transportation Company? A. No, sir; never was.

Q. In any respect whatsoever? A. Not the slightest.

Q. Were you ever connected with any of the subsidiary concerns—— A. None at all.

Q. — Which the New York Transportation Company controlled? A. No, sir.

Q. Did you know that the Metropolitan finally acquired control of the New York Cab Company? A. The New York Transportation Company?

Q. Yes. I have been told that the Metropolitan Securities Company bought their stock.

Q. I mean the Securities Company; did you know of it at the time? A. No, sir.

Q. Have any information in regard to it? A. Not the slightest.

Q. What subsidiary companies went to make up the New York Transportation Company? A. The Fifth Avenue Coach and the Carriage Company, that is all I know.

Q. How did you get that information? A. I knew the Fifth Avenue Coach Company, heard of that for years.

Q. Did you ever have any connection with the Electric Storage Battery Company? A. I never did.

Q. Did you know anything with regard to it? A. Not the slightest, except I lost some money on the stock.

Q. Then you were a stockholder; I was going to ask you that; were you a stockholder? A. Yes, sir.

Q. When? A. I could not tell you.

Q. About when? A. When the stock was up to 147.

Q. When was that? A. I cannot tell the date.

Q. About what time? A. I could not tell.

Q. Before or after the passage of this bill that I referred to? A. I could not tell you, Judge.

Q. Couldn't you recall whether it was before the passage of this bill or afterwards? A. No, sir.

Q. How much stock did you own? A. 100 shares.

Q. Where did you buy it? A. New York.

Q. Through a brokerage concern? A. I think Strong & Sturgis. I would not be sure about that, though.

Q. Were you ever a stockholder in the New York Transportation Company? A. I never was.

Q. Or the New York Electric Vehicle and Transportation Company? A. No, sir, never was.

Q. Were you a stockholder in any of the subsidiary companies? A. No, sir, I was not.

Q. Didn't you buy 125 shares of stock of the Storage Battery Company through Strong, Sturgis & Company, instead of 100 shares? A. I think it was 100, Judge.

Q. Did you ever have any business with Strong, Sturgis & Company, other than the purchase of this stock? A. Yes, sir.

Q. Did you have a trading account with Strong, Sturgis & Company? A. Yes, sir.

Q. When did that account start? A. I think 1902.

Q. How long did it continue? A. I had I think only one or two transactions, a few transactions.

Q. Were the transactions which entered into that account all your individual transactions? A. They were.

Q. No one else interested in them whatsoever? A. Not the slightest.

Q. Did you ever have a trading account with Ellingwood & Cunningham? A. There is an account there with Rogers and R.

Q. Who is R.? A. Supposed to be Robinson.

Q. Did you have an account with Ellingwood & Cunningham? A. Mr. Rogers had the account.

Q. Were you interested in the account? A. I was interested with Mr. Rogers.

Q. Then you might say a joint account there? A. My relations were with Mr. Rogers, not with Ellingwood & Cunningham.

Q. Then you and he had a trading account with Ellingwood & Cunningham? A. That is right.

Q. When did this account open? A. I do not recollect.

Q. About when? A. I could not tell.

Q. Before or after your connection with the New York Street Railway Association? A. After.

Q. Didn't it run from February, 1899, to February, 1905, and continue simply during the time of your connection with the Street Railway Association — that is, you left in 1903? A. I don't think it covered so much time, Judge.

Q. I think the books show that the account started in February,

899, and continued to February, 1905; would that accord with your recollection? A. I do not recollect.

Q. Was this a heavy account? A. I don't know, sir; Mr. Rogers attended to it.

Q. How much money did you deposit in this account to the credit of it? A. I do not think any.

Q. Do you recall April 7, 1899, depositing \$2,000? A. I recall depositing \$2,000; I do not know as it was on that account, though.

Q. What other account did you have there? A. I think there was an account of the Dominion Coal stock, which was closed; my recollection of it was that \$2,000 of it went into Dominion Coal.

Q. Then you did have another account with Ellingwood & Cunningham? A. Yes, sir.

Q. An individual account? A. Yes, sir, it was the same account.

Q. The same account as the Rogers & Robinson account? A. No, I had it with Mr. Rogers, and I think Mr. Cunningham was interested in the Coal; that is my recollection; but I would not be sure.

Q. What is your recollection in regard to the deposit of this \$2,000, what account was that deposited to the credit of? A. I could not tell.

Q. I show you page 60, one of the bound ledgers of Ellingwood & Cunningham, being No. 4; you will note that the account opens April 30, 1899, does it not? A. Yes, sir.

Q. I show you page 440, ledger No. 3, you will note, do you not, that you had at that time, you and Mr. Rogers, a Union Traction account with Ellingwood & Cunningham which opened February 24, 1899; is that correct? A. Yes, I recollect we did have some Union Traction.

Q. It appears from this account, Mr. Robinson, an examination of this account which you have before you in these two ledgers and also in the leaves from the loose leaf ledgers of Ellingwood & Cunningham, that your account with Mr. Rogers extended from February, 1899, to February, 1905, during that time you deposited \$2,000, and during that time you withdrew \$4,000; on April 6, 1899, \$2,000, and on April 10th, 1899, \$2,000; that the

purchases during the continuation of the account amounted to \$1,350,000; that the account wound up with a loss of \$35,000, of which your share was \$17,455.71; is that your recollection of the account? A. I have not any recollection of the account because I never received a copy of it, Judge.

Q. Well, does that statement accord with your knowledge of the account as it progressed? A. I am told so by Mr. Rogers.

Q. Was this balance of your share of the loss \$17,455.71 paid? A. Not by me.

Q. Has it been paid? A. I don't know.

Q. Have you ever been requested to pay it? A. No, sir.

Q. Did any one ever suggest to you that you should pay it? A. Yes.

Q. Who? A. Mr. Lauterbach; young Mr. Lauterbach.

Q. He is the attorney for the creditors' committee, is he? A. I believe so.

Q. He was? A. I believe so.

Q. But it has not been paid, has it? A. No, sir, not by me.

Q. Now it appears from the evidence, Mr. Robinson, that in 1900 the Metropolitan contributed in assessments to the association \$12,300.47; did it ever contribute any larger amount than that in any one year? A. Not to my knowledge, Judge.

Q. That is the largest amount? A. As I recollect it.

Q. What is the next largest as you recall? A. I do not recall, sir.

Q. You received this \$12,300.47, did you not? A. I believe so.

Q. And receipted for it? A. I believe so.

Q. What did you do with that money, do you recall? A. Endorsed the check and deposited it in the bank; drew checks against it to the order probably of Mr. G. Tracy Rogers.

Q. Where did you deposit it? A. I don't know.

Q. You deposited it in the Bank of Commerce, did you not? A. I don't recollect.

Q. I show you a voucher of the Metropolitan Company, also two checks, one for \$6,000, and one for \$3,000, that was part of it, was it not? A. I do not recollect.

Q. What year were these deposits made? A. These are dated September 17, 1900.

Q. Both of them of that date? A. One is May 21, 1900, the other September 17, 1900.

Q. Weren't they part of the \$12,300, or were they, in addition to the \$12,300? A. I should think in addition to the \$12,300.

Q. That would make the total payment for that year how much? A. That would make \$21,300.

Q. Of the Metropolitan in 1900? A. Yes.

Q. Did the Metropolitan pay any more in 1900? A. I don't recollect.

Q. If the Metropolitan paid \$21,300 in 1900, what do you think the amount of the assessments were for the year 1900? A. I do not recollect.

Q. You have stated that you did not think they exceeded \$20,000 in one year? A. No, sir.

Q. Now it appeared that the Metropolitan line paid \$21,000 that year, what do you think the entire receipts of the association from assessments were that year? A. I could not tell.

Q. What would be your best judgment? A. I haven't any idea.

Q. What did the assessments usually amount to outside of the Metropolitan? A. I think the total was from seven to twelve thousand dollars. I don't know what proportion of that the Metropolitan were.

Q. Were these assessments or dues? A. Assessments.

Q. The total you say was from 7,000 to 12,000 — was that assessments or dues? A. The assessments were from 7,000 to 20,000.

Q. You think the assessments were from 10,000 to 20,000? A. Yes, sir.

Q. Now what proportion of the entire assessments did the Metropolitan pay for any one year? A. I cannot tell you, sir.

Q. What proportion of the entire gross receipts of surface roads was the Metropolitan's gross receipts in any one year? A. I can't tell — something about \$20,000,000 I believe.

Q. What proportion did they bear to the gross receipts of all the members of the association? A. I can't tell.

Q. Well, about? A. I can't tell.

Q. Was it one-twentieth? A. I can't tell, Judge. I have no idea what Buffalo had or Syracuse or any one else.

Q. Well, if the Metropolitan paid 21,000 in 1900, the receipts of the association for that year were more than that at least weren't they? A. Yes, sir.

Q. Do you think they would amount to as much as \$50,000? A. No, sir, I should not.

Q. Do you think the Metropolitan paid more than one third? A. Probably.

Q. Then its gross receipts were more than one third of all the surface roads of the State? A. I don't know about that, whether it was all based on gross receipts, but I suppose it was.

Q. That is what you have stated, by action of the executive committee. A. Yes, sir.

Q. Well now, wouldn't it be your best judgment if the Metropolitan paid \$21,000, that the gross receipts from all sources in that year must have amounted in the aggregate to nearly \$70,000? A. No, these may have been advances carried over from another year.

Q. We haven't any evidence of any advancements or carrying over from other years. There were large contributions in the preceding and the following year, and there is nothing to indicate any advances whatsoever. What I am trying to get at and what the Committee would like to know would be of some use, possibly to them, how much money this association used in various years for political purposes. It used money, it acquired that money by assessment, the money was used for legislative purposes, and the Committee would like to know, and I think it is within your knowledge, if you will refresh your recollection, approximately at least the amount that was used in any one year. A. I cannot judge I can't aid you.

Q. Now you have stated here that the amount in your judgment did not exceed \$20,000, and I have shown you that in one year the Metropolitan alone paid \$20,000. Can't you aid me somewhat by your recollection as to what the others paid? A. I cannot.

Q. Do you remember what the Metropolitan paid in the year 1901? A. No, I don't recall.

Q. Can you give me any estimate? A. No, sir.

Q. That was two years before your term expired? A. Yes, sir.

Q. What is your judgment as to the amount contributed? A. I haven't any judgment.

Q. I show you a voucher, a check drawn to the order of the association by Mr. Vreeland, for \$7,000, dated April 22, 1901. Did you receive that check? A. No, sir.

Q. Who did? A. It bears the endorsement of Mr. John T. Littoe, who was associated in the office at that time.

Q. What did he do with it? A. Deposited it in the Morton Trust Co., special account.

Q. That is to your special account? A. Yes, sir.

Q. Do you recall any other contributions by the Metropolitan in 1901? A. No, sir, there may have been, but I don't recall it, sir.

Q. This is the only contribution we have been able to cover, so I can't refresh your recollection again. Now can't you aid us some by your recollection as to whether or not, two years before you left the Metropolitan made any contributions in addition to this \$7,000? A. I cannot. It may have been made without my knowledge, but I have no recollection of having received any or putting it through the account.

Q. Do you remember what was done with this money? A. No, sir, except to draw checks to Rogers, that is all.

Q. Do you remember drawing a check to Rogers, do you have any personal recollection? A. No, sir, except that I drew lots of checks to Rogers.

Q. It appears here that the very next day you drew a check, which was sent to Ellingwood & Cunningham, for \$7,000, and that that was placed to Senator Goodsell's credit. Do you recall that? A. No, sir.

Q. Do you recall drawing the check? A. Yes, sir.

Q. What were the circumstances under which it was drawn? A. I think Mr. Rogers called me on the telephone and asked me if there was any money in the account, and I said there was, and he said to send a check for it.

Q. Did he know that the Metropolitan had just contributed \$7,000? A. I don't know.

Q. Did you tell him? A. I don't recall that I did.

Q. Well, did you or didn't you? A. I can't say.

Q. Had he previous to that time stated to you that the association needed money? A. I can't tell you that — he frequently said that.

Q. Was this contribution made by the Metropolitan at that time at his solicitation? A. I don't know.

Q. Had he said anything to you about it? A. No, sir.

Q. Did he tell you what he was going to do with the money? A. He did not.

Q. You will recall, as I stated to you, that the very next day the \$9,000 credit was made to Senator Goodsell, and that is the day the Legislature adjourned in that year? Does that refresh your recollection? A. No, sir.

Q. Did Mr. Rogers say anything about the necessity of paying Senator Goodsell \$9,000 on the adjournment of the Legislature? A. He did not. He never spoke to me about paying Senator Goodsell anything.

Q. Did he say anything about placing \$9,000 to the credit of Senator Goodsell? A. He did not, he never mentioned his name.

Q. Were you and Mr. Rogers on good terms? A. Excellent.

Q. There was no reason why you did not converse freely about matters in which both of you were interested? A. There was not. I was not interested in that.

Q. Not at all? A. Not the slightest.

Q. Notwithstanding the fact that your company had just paid \$7,000, and you were secretary and treasurer of the association and he was the disbursing officer, you were not interested at all? A. Not a bit. My directions from the executive committee were turned over to Mr. Rogers and my responsibility stopped there. I didn't care what he did with it, I didn't care whether he threw it in the street or what he did with it.

Q. Now going back a year, in 1900, April 21st, 1900, you also received \$2,500 from the Metropolitan in addition to what I have shown you. You remember the \$21,300 — you also received \$2,500. Do you recall that? A. No, sir.

Q. I show you a voucher and see if that refreshes your recollection. A. That is my signature on the back.

Q. You received the check, did you not? A. I did.

Q. \$2,500? A. Yes, sir.

Q. Drawn by Mr. Vreeland? A. Yes, sir.

Q. What did you do with it? A. I don't know.

Q. It was cashed, was it not? A. No, I don't believe it was.

Q. Do you think it was deposited? A. I think probably it was, through the National Union Bank.

Q. Do you find any stamp on the back of it indicating a deposit in the bank, or of its having gone through the Clearing House? A. Possibly I might have had an account with the National Union at the time, and they will transfer from one account to the other without stamping the checks.

Q. Do you think you had an account in the National Union? A. I might have had.

Q. If it was cashed what was the cash gotten for? A. I don't know.

Q. That was the funds of the association, was it not? A. I don't know.

Q. Wasn't that an assessment by the Metropolitan? A. I don't recall.

Q. For what other purposes would they be paying you \$2,500 at that time? A. None other.

Q. It appears from the records in 1899, going back still another year, that you received from the Metropolitan \$13,463.70. Do you recall that? A. No, sir.

Q. Wasn't that an assessment? A. Probably so.

Q. Now if the Metropolitan was contributing in 1899 \$13,463.70, and in 1900 something over \$230,000, how much money do you think the association was using during those two years or raising by assessment? A. I can't tell.

Q. That would not aid your recollection? A. It would not.

Q. But you still would raise your figure above \$20,000 that you gave at the outset, wouldn't you? A. Possibly.

Q. How much above that? A. I can't say.

Q. You said you thought they didn't use in any one year over \$20,000 from assessments. Now the Metropolitan having paid \$130,000 in 1899, and having paid \$23,000 and over in 1900, how much would you raise your figures now? A. Well, \$3,000.

Q. I mean as to the entire assessments collected by the association. A. I can't tell. The whole money might have been paid in by the Metropolitan and the others delinquent.

Q. Oh — there is no evidence of that here. A. Probably there is no record of it.

Q. Your first supposition was that perhaps the Metropolitan was advancing in one year these assessments for several years, but now we find that the year after and the year before they were making large payments, consequently it was not any advance in 1900 for other years. Do you remember what the Metropolitan paid in 1902? We have 1899, 1900 and 1901 — what did it pay in 1902? A. I don't know.

Q. Unfortunately I can't refresh your recollection. The records of the association for that year are not in existence. Can you give me any aid whatsoever? A. I cannot.

Q. How much did they pay in 1903? A. I don't know.

Q. Do you remember any payment in 1903? A. No, sir. Yes. I think it was in 1903, I remember one payment I think of \$8,000.

Q. When was that payment made? A. I don't know.

Q. By whom was it made? A. I don't know.

Q. What do you recall in regard to it? A. I recall from reading in the newspapers, that brought it to my attention, the voucher in the Lankemann case.

Q. What recollection did you have about it independent of what you had been reading in the newspapers? A. I haven't any.

Q. None whatsoever? A. No, sir.

Q. That was your last year? A. I haven't any recollection about it, except getting a letter from Mr. Cole.

Q. What did the letter say? A. It is in the record — the substance of it was that he had received the \$8,000.

Q. Did you have any recollection of that letter before you read it in the record? A. No, I had not, I had forgotten it.

Q. With your recollection refreshed by the letter what now is your recollection in regard to it? A. I have no further recollection than that, sir.

Q. Let me show you a copy of a letter and see if that will refresh your recollection any. This is the letter, the letter of September 27, 1903, in which he reports to you having received the \$8,000. He says in this letter, "On July 22nd, I commenced deposits with the bank with which I am doing business, and deposited remittances from the Metropolitan Street Railroad, account of the Third Avenue Railroad, \$8,000?" A. That is the letter I saw, yes, sir.

Q. Is that the one you referred to? A. Yes, sir.

Q. Had you any other correspondence with Mr. Cole in regard to the matter? A. I think not.

Q. What were the circumstances of your sending \$8,000 — had he requested it? A. I didn't send it.

Q. What were the circumstances of the Metropolitan sending it to him? A. I don't know.

Q. Are you positive that you didn't send it to him? A. Yes, sir, quite positive.

Q. Of that you have a positive recollection? A. Yes, sir.

Q. Why is it that you have such a positive recollection in regard to that transaction whereas in regard to these transactions occurring in 1902, 1900 and 1899, when I showed you drafts and checks aggregating six thousand, seven thousand dollars, you had absolutely no recollection in regard to it? A. Because I received the letter from Mr. Cole calling attention to it.

Q. How is that you recall receiving that letter? A. By the copy of it in the record.

Q. That refreshes your recollection that you received the letter acknowledging its receipt, but how does that refresh your recollection that you never sent it? A. All the things I sent I O. K'd.

Q. The things you sent you O. K'd in what way? A. Wrote approvals for them. My name is not on that voucher.

Q. Whom did you write that approval for? A. Most of the vouchers I made were sent to the auditor with the O. K. on them, things that I authorized. This authority, as I read the papers, came from someone else.

Q. None of these checks which were drawn by Mr. Vreeland to your order have any O. K. on them, have they? A. No, sir.

Q. None of these vouchers, these returned vouchers, connected with the office, or drafts, none of them have an O. K. on them, have they? A. That is true.

Q. Then how is it that you say that all these transactions which went through your hands had your O. K. on them? A. I didn't say that.

Q. What did you say? A. I say the things I authorized to be paid.

Q. Did you authorize this? A. No, sir.

Q. You received it? A. Yes, sir.

Q. But you didn't authorize that? A. No, sir.

Q. What transactions did bear your O. K.? A. A great many.

Q. What in connection with the Street Railway Association?

A. None at all.

Q. Then if none in connection with the Street Railway Association bore your O. K. why should this bear your O. K.? That is this \$8,000. A. It would not unless I sent it.

Q. Then that couldn't be the reason why you know you did not send it. The fact that it does not appear in this manner is no evidence that you didn't send it? A. Well, I didn't send it.

Q. You are sure you didn't send it? A. Yes, sir.

Q. About that you wouldn't be mistaken? A. No, sir.

Q. I show you a copy of a letter written by Mr. Cole to you: "W. W. Cole, Elmira, New York. Elmira, July 22nd, 1903. Henry A. Robinson, Secretary Street Railroad Association, 520 Broadway, New York. Dear Sir: Your favor of the 21st instant, enclosing check and voucher for \$8,000 in part payment of assessment of dues received. Enclosed find receipted voucher. Yours truly, W. W. Cole." Does that refresh your recollection?

A. No, it does not.

Q. Mr. Cole says there, "Your favor of the 21st inst., enclosing check and voucher for \$8,000 in part payment received." That does not refresh your recollection? A. No, sir, I don't think I sent it to him.

Q. Then Mr. Cole was mistaken when he wrote that letter?

A. I was the only person in the company that Mr. Cole knew at that time, so he probably wrote to me, having received the voucher.

Q. But he says "Your favor." A. There is some mistake about that — I don't think I wrote him.

Q. Well now, is it a matter of think or a matter of know? A. I am quite certain I did not.

Q. Well now, not whether you are quite certain, Mr. Robinson — did you send it or didn't you send that letter? A. I should say no.

Q. Not what you should say, I want the fact. Did you or did you not? A. I don't know, my best recollection is no.

Q. Have you any recollection in regard to it? A. No.

Q. You stated a moment ago that you had no recollection except as refreshed by the other letter. Now I show you in addition to that this letter. Now isn't that positive proof to you, as it is to this Committee, that Mr. Cole, who was the new treasurer, just elected, acknowledges the receipt of your favor enclosing a check for \$8,000? A. No, sir.

Q. You got this letter from Mr. Cole, didn't you? A. Yes, sir.

Q. When you got it you received the voucher — what did you do with it? A. It went into the treasurer's office I think. The voucher came — I don't recall having received it — probably the letter was opened by some clerk in the outer office —

Q. You just stated that you received the voucher. A. I don't recall that I opened it. I remember getting the letter, but I don't remember opening it.

Q. What did you direct to be done with the voucher? A. Nothing at all, it was opened by some clerk in the front room.

Q. How is that you have such a minute recollection in regard to who opened this letter and what he did, when you told me at the outset that you had no recollection at all except as I refreshed your recollection? A. I have no recollection at all, but I assume that is the way it was done. My mail would come in the morning, and the clerks would open it and throw out anything that was not necessary to bring to my attention.

Q. But you say you remember seeing this letter — they didn't throw it out? A. I kept the letter but the voucher probably went over to the treasurer's office.

Q. He wouldn't throw out the voucher, would he — what is your recollection about it? A. I haven't any recollection.

Q. Let me show you the voucher and see if that refreshes your recollection. It reads "Metropolitan Street Railway Co., Lessee, Account of Third Avenue Railroad Co., lessor, and its subsidiary lines. Cable Building, 621 Broadway, to Charles Lankeman, or W. W. Cole, attorney, registered No. 1350-B, 6715; July 10, 1903. In full settlement for personal injuries received May 1, 1902, at 99th street and Third avenue, on car No. 247, run No. 70, trip 1, Northbound. Above was passenger on car, standing on the rear platform. Car had come to a stop at 99th street and started up

with a sudden jerk, throwing the man over the rear dash into the street, and received injuries to his back and spine, shock and general confusion. In settlement of claim, Third Avenue Electric Co. \$8,000. Credit check 1707-A.

C. O. L. Please receipt below and return to treasurer's room. Room 805, 621 Broadway, New York. Examined and registered by B. C. Moorehead, auditor. Approved for payment, R. L. Mead, assistant, to president, July 22, 1903. Received of Metropolitan Street Railway Co., lessees, and the Third Avenue Railroad Co., lessors, and its subsidiary lines, \$8,000 for payment in full of the above account. W. W. Cole, Attorney." Was this in that letter?

A. Yes, sir.

Q. What did you do with it? A. I didn't receive it.

Q. Who was Charles Lankemann? A. I don't know.

Q. Who was W. W. Cole, Attorney? A. W. W. Cole was Mr. Cole here, the treasurer of the association.

Q. Was he a lawyer? A. I don't know.

Q. Was he attorney for Lankemann? A. I don't know.

Q. When you received this voucher back did it excite any inquiry in your mind? A. I didn't receive it, my recollection is.

Q. Who opened your mail at that time? A. I have forgotten — I had a clerk by the name of Lachman. I have forgotten the name of the stenographer.

Q. What was Mr. Lachman's first name? A. Andrew.

Q. Where is he now? A. I don't know.

Q. When did you last see him? A. Two or three years ago.

Q. Where was he then? A. He came down from Sullivan county.

Q. What was his position? A. He was a general clerk in the offices.

Q. Was he a lawyer? A. No, sir.

Q. Have you seen him since? A. No, sir.

Q. Do you know about his whereabouts? A. No.

Q. You say you saw the letter acknowledging the \$8,000? A. Oh, yes, I have the letter.

Q. What \$8,000, was it that he had received, — what \$8,000 was Mr. Cole talking about? A. I saw Cole, and \$8,000, and I assumed it was a subscription made to the association.

Q. It would have to be made through you or paid through you, wouldn't it? A. No, sir.

Q. Not if it was by the Metropolitan? A. No, sir.

Q. That created no excitement in your mind at all? A. No, sir.

Q. You didn't inquire for the voucher? A. No, sir.

Q. Do you swear positively here to-day, Mr. Robinson, that you didn't see the voucher that came in that letter? A. I am quite positive —

Q. I am asking you if you will swear positively. A. I haven't any recollection.

Q. If you saw the voucher what did you do about it? A. It went in the treasurer's office, it was sent in by the clerk if I saw it.

Q. If you saw the voucher you knew it was a false claim, and a faked up method of covering up a contribution of \$8,000 to this association, didn't you? A. No, sir.

Q. That is what it was, wasn't it? A. I don't care to pass judgment on it.

Q. Did you ever hear of any such accident? A. No.

Q. Did you ever hear of any such claim? A. I never did.

Q. Mr. Cole says he is not an attorney, that he never heard of Lankeman, that he never acted for him. That being true, would you say that this was a fake claim? A. Something looks wrong about it.

Q. What looks wrong about it? If Mr. Cole says he never saw Lankeman and never acted for him, what is there that looks wrong about it? It is wrong, isn't it? A. Yes, sir.

Q. No question about it? A. You are right.

Q. What other contributions did the Third Avenue or the Metropolitan make in this way? A. None to my knowledge.

Q. Absolutely none? A. Yes.

Q. Why was it done in this single and particular instance? A. I don't know.

Q. Was it a method of the Metropolitan? A. I don't know — I didn't do it.

Q. They have made contributions, have they not, to the association? A. They had.

Q. And Mr. Vreeland had drawn checks? A. Oh, yes.

Q. And they had passed through some to your order, and some to the order of the association? A. Yes, sir.

Q. Money used for political purposes by direction of the executive committee? A. Yes, given to Mr. Rogers for that purpose.

Q. Why, when this particular contribution was made, did it happen to be made by them in that manner, by this claim, and making up this fake order? A. I can't say.

Q. What conditions existed at that time, if any, that you know about, that would induce anyone in the Metropolitan to attempt to cover up a contribution in this way? A. I don't know of any.

Q. What is the name of this auditor? A. B. C. Moorehead.

Q. Where is Mr. Moorehead? A. I think he is at 165 Broadway.

Q. Is he a lawyer? A. No, sir.

Q. Is he connected with the Metropolitan Securities Co.? A. I think he is.

Q. In what capacity? A. I don't know.

Q. Who is Mr. Mead? A. He was assistant to the president.

Q. R. W. Mead? A. Yes, sir.

Q. Where is he? A. At the New York Transportation offices, I guess.

Q. In what capacity? A. I don't know. He is an officer, but I don't know what.

Q. Now in the settlement of claims against the Third Avenue similar to this fake claim here, the claim had to be examined and registered by the auditor and approved for payment by the assistant to the president, did it not? A. Yes, sir.

Q. In order to have them do that what evidence did they have to have before them before they would let it pass? A. I don't know what they required.

Q. You were the general solicitor, were you not? A. Yes, sir.

Q. What is your experience? A. The usual way was that some of the clerks in these accident cases made up a slip which was O. K'd by some of the officers, and it went to the first vice president and the vice president O. K'd it.

Q. Who, beside yourself as general solicitor in the Metropolitan, had authority to O. K. the settlement of any claims for injury? A. Mr. Patterson, Mr. McCabe.

Q. I am speaking of the year 1903? A. Yes, sir.

Q. Mr. Patterson and Mr. McCabe? A. Yes, sir.

Q. Any one else? A. I think so.

Q. Who else? A. All the head attorneys.

Q. Who were in 1903 the head attorneys? A. I can't say, that is Patterson and McCabe, they were the head ones.

Q. Isn't it a fact that every case that went through for settlement, especially involving amounts like \$8,000, or any number of thousands of dollars, had to pass through the hands of the general solicitor, or in his absence through the hands of the man who was acting for him? A. No, sir.

Q. Who, besides yourself and Patterson and McCabe in 1903, had authority to O. K. the settlement of a claim aggregating \$8,000? A. Mr. Gannon, the vice-president.

Q. Was he an attorney? A. No.

Q. Had an action been brought on this claim? A. I don't know.

Q. Is there anything in the voucher to indicate whether it had or not? A. No, sir.

Q. It says "B-6715," what does that indicate? A. The number of the accident.

Q. The number where? A. On the back of the accident report.

Q. Were they kept in a book or filed away? A. They were filed away.

Q. What was the number of your room there? A. I can't tell you.

Q. Who was the treasurer? A. Mr. Warren, I think.

Q. What is his first name? A. Charles E.

Q. Where is he? A. I don't know where he is, I think at 621 Broadway.

Q. Is he still connected with the Metropolitan Securities Company? A. No, he is employed by the receivers. This voucher says "Please receipt below and return to the treasurer's room, 805, 621 Broadway, New York City," that would go to him, would it? A. Yes, sir.

Q. Now, Mr. Robinson, will you take a moment's reflection and tell me whether you have told me everything you know in regard to this \$8,000 voucher and contribution? Yes, sir.

Q. Is there anything else in connection with it that you know?
A. No, sir.

Q. Did you, directly or indirectly, have anything to do with it further than has been indicated? A. No, sir.

Q. Do you know where Mr. Patterson's office is? A. 21 Park Row.

Q. What is his first name? A. Daniel W.

Q. Is he still attorney for the Metropolitan Securities Company? A. He is with the receivers.

Q. Mr. McCabe — what is his first name? A. Ambrose F.

Q. Where is his office? A. I think 60 Wall, I am not sure.

Judge BRUCE: I will want to examine you further in regard to this matter, Mr. Rogers, after I have had an opportunity to subpoena these men. You will return on notice, I presume.

The WITNESS: Yes, sir.

Q. Did you have anything to do, Mr. Robinson, with the bill that was introduced in the Legislature to make the Attorney General the person to sue and collect penalties for refusal to issue transfers instead of the individuals bringing the action? A. I think not, I don't recall any such thing.

Q. Did you draft the bill? A. I think not.

Q. Did you see the bill before it was introduced? A. I have no recollection of it.

Q. Did you know of its introduction? A. No, sir, I don't recall it at all.

Q. You have no knowledge of any such bill at all? A. No, sir.

W. W. COLE, recalled.

By Judge BRUCE:

Q. Mr. Cole, have you found your deposit book in which you kept a record of the receipts of money received by you for the credit of the Street Railway Association? A. No, sir, I have not.

Q. Have you made a diligent search? A. I have, very diligent.

Q. You remember the first day you were quite positive the book was in existence and that you had it? A. Yes, sir.

Q. But you have not been able to discover it at all? A. No, sir. I had all of my boxes sent to Philadelphia, and I personally examined all of them through.

Q. Have you refreshed your recollection anything with regard to the donation that was to be made, and if which made would secure the passage of the Cassidy Bill? A. No, sir, I have not.

Q. You have no further recollection on that subject? A. None at all.

Q. Let me ask you this: Has your recollection been refreshed any in regard to the payment of this \$8,000 to you as attorney for Lankemann for the injuries he received at 99th street? A. No, sir, it has not.

Q. In any respect whatsoever? A. No, sir.

Q. Look again at your letter to Mr. Robinson—you heard Mr. Robinson's testimony in regard to this letter, did you not? A. I did.

Q. That is your letter of July 22nd, 1903, to him? A. Yes, sir.

Q. Just look at it again carefully: "Dear Sir: Your favor of the 21st inst. enclosing check and voucher for \$8,000 in part payment of assessment of dues received. Enclosed find receipted voucher." Now, you testified before that you had received the letter from him on the 21st enclosing the voucher? A. Why, I don't remember any letter, I don't remember the voucher.

Q. Look at your letter and see if that refreshes your recollection? A. Why, that is my letter, I think.

Q. You state there that "Your favor of the 21st inst. enclosing check and voucher in part payment," etc. "received." You received it did you not? A. Yes, sir. Mr. Robinson sent all of his checks for either association, etc., and I made my acknowledgment to him on all receipts that came in.

Q. This receipt of voucher and check for \$8,000, and your acknowledgment of it, is correct, is it not? A. I think it is.

Q. There isn't any doubt about it, is there? A. I think not.

Q. And you enclosed the voucher which I have shown you in return to him, did you not? A. I think that is the voucher.

Q. Just let me look at it. A. Mr. Robinson sent me so many different assessments at different times —

Q. He only sent you one like that. You sent that voucher back to him, didn't you? A. I sent all vouchers back to him.

Q. You sent that back to him, didn't you? A. I believe I did.

Q. And that is the voucher you refer to in that letter, isn't it? A. I can't say, I think it is.

Q. Isn't it? A. I think it is.

Q. Is there any doubt about it? Look at the letter and voucher? A. There was so many receipts——

Q. Was there any other \$8,000 received on that date? A. I can't tell.

Q. Don't you know there was not on that date any other \$8,000? A. I don't think there was.

Q. You know there was not? A. I had so many receipts coming in, I had so many accounts to see to.

Q. Look at your letter of September 27th to him, in which you give an itemized statement of your receipts—were there any other \$8,000 receipts? A. No, sir, there are not.

Q. That was the only \$8,000 received, wasn't it? A. That is the only one.

Q. That is the \$8,000 which you refer to in your letter? A. I think it is.

Q. Don't you know it is? I don't want any hiding behind "thinking"—is there any doubt about it? A. I think not, no sir.

Judge BRUCE: Mr. Cole, if you find the old deposit book, you will notify me, will you?

The WITNESS: I will.

G. TRACY ROGERS, recalled.

By Judge BRUCE:

Q. Mr. Rogers, since I last examined you have you thought over the evidence which you gave during the examination? A. I did, a part of it.

Q. With special reference to those matters concerning which your recollection was absolutely at fault, that you had no recollection? Have you heard Mr. Robinson testify? A. I have, sir.

Q. Has the interval which has elapsed between your examination and also the examination of Mr. Robinson in any way refreshed your recollection as to the contributions which you made during various years to county committees, legislatures, and the State Committee? A. It has not.

Q. You have no additional recollection? A. None whatever.

Q. On those subjects? A. No, sir.

Q. You have heard Mr. Robinson's testimony that all these matters, by action of the Executive Committee, were referred to you? A. I did.

Q. Is that correct? A. It is.

Q. When was this action first taken by the Executive Committee? Now you became president, you recall, in the years 1905, didn't you,—1904 and 1905? A. No, 1903 and 1904.

Q. 1903 and 1904? A. I think so.

Q. When was this action taken first by the Executive Committee? You first became president, as it appears by the record here, in 1903 and 1904, did you not? A. That's right.

Q. Now when was this action first taken by the Executive Committee? A. At the time I suggested that it would be necessary to make political contributions.

Q. Do you remember where the meeting was held? A. I think those meetings were usually held at 621 Broadway.

Q. This particular meeting, do you recall where that was held? A. I do.

Q. Those were the offices of the Metropolitan, were they not? A. Yes.

Q. Who suggested to your mind that the levying of these assessments and levying of political contributions would be a good thing? A. I think it arose in my own mind.

Q. Did you suggest it to the committee or did some member suggest it at the meeting of the committee? A. No, I think I did.

Q. And did you state your reasons to the committee? A. Naturally.

Q. What did you say? A. It would be absolutely necessary to do that.

Q. That is, you said it would be absolutely necessary to make the contributions? A. If I remember, I testified before —

Q. Wait a moment. You said it would be absolutely necessary to do that. Now, in making that reply, were you referring to that it would be absolutely necessary for you to make the suggestions or give your reasons, or did you state to the committee that it would be absolutely necessary to make contributions? A. I think

that word absolutely — I think I used the expression, possibly it would be best to do it.

Q. To do what? A. To make the assessments and to contribute to political campaigns.

Q. Do you recall who was present at that meeting? A. I do not.

Q. Was it a full meeting? A. You asked me when the meeting first occurred. I am trying to inform you.

Q. Well, tell me? A. I don't think we did anything of that kind for the first two or three years I was president.

Q. That would bring it down to 1897? A. I think it was later than that.

Q. 1898? I should guess that it was 1898 or 1899, in there — I don't know. You may have evidence here that would refresh my memory, but I think it was as late as that.

Q. Now, what has happened that led you to believe that you ought to adopt a new policy, and the new policy being the levying of assessments and making of contributions? A. Well, as I have testified before, the changing to electricity as a motive power. To electricity, has cost, as I testified —

Q. I know, but let us not go into that. That cause did not occur from 1903 to 1907? A. Oh, yes, it was occurring all through there. I adopted electricity as a motive power in 1900. the first there was in the State.

Q. Go on. Let me hear what had happened that led you to believe that it would be a good thing to do? A. Simply the situation.

Q. What situation? A. That I thought that was the wisest thing to do.

Q. Well, why? A. Now, don't fence around. A. No reason why, only it was thought —

Q. Well, why? A. Because I thought it would be the best thing to do.

Q. Why did you think it would be the best thing to do? A. I thought we would get better treatment.

Q. From whom? A. The Legislature.

Q. If these contributions were made? A. Naturally.

Q. You stated before that you thought by making these con-

tributions you would be able to retain in the Legislature good, honest, fearless men? A. That's it.

Q. Now, you say you would be able to get better treatment? A. Yes, sir.

Q. Is it necessary to make contributions to good, honest, fair men, to get fair treatment? A. It was necessary to get those men there.

Q. And if you got those men there? A. I would have no fear.

Q. Now give us those men? A. I can't.

Q. Give us some of them? A. No.

Q. Can't you give us any of them? A. No.

Q. Was Mr. Bedell one of them? A. I can't remember the names. Mr. Bedell was always a fair man.

Q. You mean, with the railroads or the people? A. With the people.

Q. How with the railroads? A. Always.

Q. Always fair with the railroads. How about Mr. Goodsell? A. The same.

Q. And Mr. Rogers — they were all on the Railroads Committee, were they not? A. Mr. Rogers was always a fair man.

Q. Those were the three that were on the Railroad Committee, were they? A. I think they were.

Q. Now, did you make this statement to the executive committee at this meeting? A. That I thought that would be the best thing to do.

Q. Yes? A. I think so.

Q. What did they say? A. Well, they evidently coincided with my judgment.

Q. Well, give us your recollection of what was said? A. Well, I cannot tell what was said.

Q. Give it in substance? A. I can't. They wanted to know about how much we wanted to contribute, something of that kind.

Q. What did you say? A. I told them, not a large amount.

Q. What amount? A. I think we raised \$7,500 the first year, \$8,000,— something like that.

Q. And later on you raised a very much larger amount, did you not? A. Not very much. I think it came to about \$20,000.

Q. Well, some years you raised more than twenty thousand, did you not? A. I think not.

Q. It appears in evidence that on some years there was more than that raised? A. I don't care about the evidence.

Q. I presume that is true? A. Because I know how much was raised.

Q. How much did you raise? A. We raised from about \$7,500 to \$20,000. Now some of those years we had to raise to take care of the deficit.

Q. What deficit? A. Some years we were short.

Q. What years were you short? A. I cannot tell you the short years.

Q. Give me one of the years that was short? A. Well, for an illustration, I think I am due an explanation about the Metropolitan, didn't pay for three or four years.

Q. What years did not the Brooklyn Rapid Transit pay? A. The last two or three years.

Q. What last two or three years? A. That we made the assessments.

Q. What years were those? A. Why, the evidence shows here.

Q. Well, tell me? A. I think it was 1902 or '03, we stopped it.

Q. Did the Brooklyn Rapid Transit contribute any in 1902? A. I say, the last two or three years.

Q. Well, give me the years. A. Well, if we stopped in 1903, it would be 1902 and '03.

Q. When did you stop — you were there — when did you stop. Now don't ask for evidence, because your whole testimony is largely composed of what I produce before you. Now, I want your recollection independent. Now, when did you stop. Take your report? A. We stopped the last year I was president.

Q. 1903? A. Yes, sir.

Q. The old management went out and the new came in? A. Yes, sir.

Q. During what years did the Brooklyn Rapid Transit not contribute? A. I say, I think the last three years.

Q. 1903, 1902 and 1901, is that correct? A. I think so.

Q. What other road did not contribute? A. I can't remember. I happen to remember them, because they are a large road.

Q. It appears from the evidence here that in the year 1900, when the Brooklyn Rapid Transit did contribute, that the Metro-

politan put up twenty odd thousand alone? A. That, I don't know.

Q. Now, you testified that your expenditures ran from seven to twenty thousand? A. Yes, sir.

Q. How do you reconcile that? A. I know what moneys I had to use, and it averaged from seventy-five hundred to twenty thousand a year — some years more than that.

Q. Now I am glad that that is one thing you know, what moneys you used. Now, what moneys did you use? A. I used all that came to me.

Q. Now how much came to you — take your last year, 1903, how much came to you then? A. I can't tell you.

Q. When I tell you that the Metropolitan contributed in 1900 over \$25,000 — you say, I don't care for evidence, I know what came to me. How much came to you in 1900? A. I can't tell you.

Q. Then how do you know that it was not more than \$20,000? A. I don't, but I know that was the general talk then that it had gone up as much as 20,000 a year.

Q. We don't want general talk, because the evidence shows that one company alone contributed \$23,000? A. That was to make up a deficit.

Q. The year before I showed that it contributed, \$13,000. In 1901, \$17,000. When was this deficit? A. It might have been 1901.

Q. In 1901 they contributed, \$7,000 in one lump? A. That is all right.

Q. Now, Mr. Rogers, was there any other firm besides Ellingwood & Cunningham in which you had brokerage accounts? A. No, sir.

Q. Was there any other firm — are you quite sure that you had no accounts with any other firm than Ellingwood & Cunningham? A. Not that I know of. Not that I can recollect.

Q. Was there any other firm except Ellingwood & Cunningham? A. Oh, one minute. I think I had one transaction with C. D. Barney & Company, of Philadelphia.

Q. What was that in, in what stock? A. I don't know. Some stock in Philadelphia.

Q. Electric Storage Battery? A. No, sir.

Q. Now, Mr. Rogers, was there any other brokerage firm or banking house through which the association or you acting for it placed moneys to the credit of men in the Legislature during the years when you was president? A. None that I can recollect.

Q. Well, you would know, wouldn't you? Don't make that a matter of recollection? A. I say, none that I recollect.

Q. No other firm? A. None that I recollect.

Q. I want you to search your recollection, now. I have asked you a question. A. I am searching it now. None that I recollect.

Q. I am not going to let you hide behind "recollect?" A. I am not trying to hide.

Q. Tell me frankly, was there any other firm? A. None that I know of or remember or recollect.

Q. Well, if there were others, you would recollect it? A. If there was, I would tell you.

Q. Then, you state positively that there were not? A. None that I recollect. I don't know one that I had anything of that kind with. You may find something of that kind, but I don't recollect.

Q. Was there any firm in Albany through which — A. I don't think I ever had a dealing with a firm in Albany.

Q. Had not? A. No, none that I know of, in any way, shape or manner.

Q. Did you during the time you were president of this association, directly or indirectly, make any contributions, as you call them, for political purposes, to any of the members of the Legislature through any other firm than Ellingwood & Cunningham? What is your answer? A. The same as before.

Q. Well, what is it? A. That I don't remember of anyone.

Q. Well, if you had, you would remember it? A. Well, if I remembered it I would tell you.

Q. Well, if it occurred, you would remember? A. Well, I don't know. That is a good while ago. If there was, I would tell you.

Q. But if you made such contributions through some other firm than your own firm you would recall it? A. I might, and might not.

Q. Did you make any contributions for Mr. Nixon through any other firm than Ellingwood & Cunningham? A. Not that I know of.

Q. Did you make any other contributions for Mr. Bedell? A. Not that I know of.

Q. Through any other firm than Ellingwood & Cunningham? A. Not that I know of.

Q. For Mr. J. T. Rogers? A. Not that I know of.

Q. For Mr. Goodsell? A. Not that I know of.

Q. For Mr. Malby? A. Not that I know of.

Q. Or any other member of the Legislature? A. Not that I know of.

Q. Now, I am asking you, Mr. Rogers, so you may be specific about it. I want you to be specific. A. Well, I have answered it.

Q. If you have, I want you to state so. Now, Mr. Rogers, did you place any money to the credit of any member of the Legislature at any time through any other firm than Ellingwood & Cunningham? A. I have answered that, Judge.

Q. Well, answer it again? A. The same as I have before. None that I recollect of, in any way, shape or manner.

By Senator WAGNER:

Q. Mr. Rogers, the other day I remember you stating that your contributions to the campaign of members of the Legislature was for the purpose of securing fair treatment to the people and to the railroads, and I asked you the question whether it was not a fact, that at times in matters of legislation the interests of the railroads and the interests of the people conflicted. Now, assuming that a matter came up where those interests did conflict, how did you expect, for instance a member like Mr. Bedell, whom you stated treated both fairly, to vote or act? How would you expect him to vote or act, after making a substantial contribution to his campaign? A. I should expect Mr. Bedell first to adhere to his oath of office, or to his position as a member of the Legislature, and I should expect him to protect the railroads in these absurd bills, like shelter houses, insulating the trolley wires, et cetera.

Q. I meant a specific case where the interests of the people and the interests of the railroads conflicted, how would you expect

him to act in that particular case? A. That is entirely a question of judgment in regards to how and how far those interests conflicted. But you never saw the association fighting a bill that was a proper, fair bill, in Albany.

Q. Proper and fair in the opinion — A. To the people.

Q. In the opinion of the railroad interests? A. Yes, to anybody, sir.

Q. Well now, you don't mind my asking you — A. Oh, I am pleased to answer it.

Q. I think you also stated that you made campaign contributions to men only who you were satisfied would serve the people and treat the railroad companies fairly? A. That was my intention. I may have made mistakes.

Q. Now, that determination you came to yourself, did you? A. I did.

Q. You judged the members as they were nominated? A. I did.

Q. Now, in most of the districts in which candidates ran for public office, the district was either overwhelmingly Democratic or Republican, wasn't it? A. No; some of them had a hard time.

Q. Take the district of Speaker Nixon? A. That is true.

Q. That is an overwhelmingly Republican district, is it not? A. At the same time, the Speaker necessarily had his expenses, always.

Q. But irrespective of whether you contributed to his campaign or not, Speaker Nixon, if he were nominated, would be elected? A. I believe that to be true.

Q. You don't mean to gainsay that, do you? A. I believe that to be true. At the same time, Speaker Nixon had his expenses.

Q. He would be elected whether you contributed to his campaign or not, would not he? A. I think he would, in Chautauqua county.

Q. Then what was the object of your giving him money? A. Assist him in his election, to pay his expenses — his election expenses.

Q. You probably don't catch my point? A. Oh, I do catch your point. You want to know why I gave to a man who was sure to be elected.

Q. Yes, a campaign contribution? A. I gave the money to assist him in paying his expenses.

Q. Whether you paid them or not, you would have secured fair treatment from this particular member, would you not? A. I think in that case, absolutely so, because I always did before I contributed to him. I wish to be frank. I want the Committee to ask me any questions they see fit. That is what I am here for.

Q. Did you ever contribute to the campaign fund of a man who had not previously been a member of the Legislature? A. That, I can't remember now. Senator Wagner, I don't remember. That is some years ago, and I can't remember them. I want to be frank with the Committee and any of them, asking me questions, because I am responsible. I never gave money to a man to progress or to retard a bill in Albany in my life, and I think you all know that.

Q. I never met you in my life, Mr. Rogers; never saw you before you came before this Committee, so I don't know anything about you? A. Well, others had. I am not ashamed of what I did in Albany at all.

By Senator BROUGH:

Q. Aside from the Speaker, did you ever make contributions to any members on the Railroad Committee of one House or the other? A. I can't remember. No doubt I did.

By Assemblyman FOLEY:

Q. You were in earnest when you said you contributed these sums to keep honest men in the Legislature—you were not serious? A. I did not say honest.

Q. Yes, you did? A. Good fair men, I did.

Q. No, no, you used the word "honest?" A. Well, I meant fair men.

Q. Because, don't you think it would be a reflection on every other member who did not receive funds? A. I didn't mean that.

By Judge BRUCE:

Q. You only contributed to the campaign fund of those whom you knew? A. I presume that is so.

By Assemblyman FOLEY:

Q. But it is a reflection on every honest man in the Legislature to say you contributed that? A. I did not mean that. If I said that, I did not mean that. It might have been honest in purpose — not honest so far as finances is concerned.

Vice-Chairman BROUGH: The Committee will stand adjourned until to-morrow morning at 11 o'clock, and those under subpoena will attend without further notice.

Adjourned to Thursday, October 6th, 1910, at 11 A. M.

ELEVENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, October 6th, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ALFRED HURRELL, Esq., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Multer.

LELAND H. MULTER, called as a witness, being duly sworn,
testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. Lyons, New York.

Q. What is your age? A. 42.

Q. How long have you resided at Lyons? A. About eighteen years.

Q. What is your business now? A. At present nothing.

Q. How long since you have been engaged in business? A. I have been bookkeeper more or less for a good many years.

Q. How long since you have been employed? A. Why, I don't

know the exact number of years. I have been eighteen years employed in Lyons as bookkeeper.

Q. You say you are not employed now. You have no business at the present time? A. Yes, sir. That is correct.

Q. What was your last business? A. Bookkeeper for the Lyons Beet Sugar Refining Company.

Q. When did that occupation cease? A. When the company went into bankruptcy.

Q. When was that? A. In the spring of 1910.

Q. Then up to last spring you were bookkeeper for the Lyons Beet Sugar Company? A. Yes, sir.

Q. How long were you employed in that capacity by them? A. About six years, maybe seven years; six or seven years.

Q. Do you recall when your employment began? A. I think in the spring of 1903.

Q. Prior to that time what had been your business? A. Bookkeeper.

Q. Where? A. In Lyons.

Q. For whom? A. For the Manhattan Silver Plate Company.

Q. During the time that you were bookkeeper for the Lyons Beet Sugar Company did you hold any other position in the company? A. I did.

Q. What? A. Treasurer, and secretary part of the time.

Q. During what years were you treasurer? A. From July, 1904, I think.

Q. And were you treasurer at the time the company went into bankruptcy in the spring of this year? A. I was.

Q. During what part of the time were you the secretary of the company? A. During all of that period except I think there was one year when I was not.

Q. You mean when you first went with the company from 1903? A. In 1904, this company was organized.

Q. 1904? A. Yes, sir.

Q. What year was it that you were not secretary? A. I don't know as I could say.

Q. What is your best recollection? A. Say 1907, perhaps.

Q. Who was the secretary that year? A. Mr. W. H. Egan.

Q. Where does he reside? A. Lyons.

Q. What is his business? A. Restaurant.

Q. Did you ever hold any position with the company other than secretary, treasurer, and bookkeeper? A. No, sir.

Q. Were you a director of the company? A. Oh, yes.

Q. When were you director? A. During all this time.

Q. Were you a stockholder of the company? A. No, sir.

Q. Did you hold qualifying shares? A. No, sir.

Q. Was it necessary in this company to hold qualifying shares in order to be a director? A. It was not.

Q. Taking up first your duties as bookkeeper, did you have any assistant? A. Yes, sir.

Q. How many? A. Usually one.

Q. With the aid of this assistant did you keep all the books of the company? A. Yes, sir.

Q. When was the Lyons Beet Sugar Company organized? A. I think in the spring of 1904, April, 1904.

Q. For what purpose was it organized, if you recall? A. For the manufacture of beet sugar.

Q. Did it erect a plant of its own, or did it lease a plant? A. It bought a plant.

Q. At Lyons? A. Yes, sir.

Q. What company had formerly owned the plant which it purchased? A. The Empire State Sugar Company.

Q. What were the circumstances under which this Empire State Beet Sugar Company leased its plant, or sold it rather, as you have stated, to the Lyons Beet Sugar Company? A. The Empire State Sugar Company went into bankruptcy and was sold.

Q. The plant was sold, and purchased by the Lyons Beet Sugar Company? A. Yes, sir.

Q. Who was the first president of the Lyons Beet Sugar Company? A. Frederick Stigawold.

Q. Where did he reside at that time? A. In Lyons.

Q. For how many years did he continue to be president? A. Up to October, 1909.

Q. And who succeeded him? A. Harry F. Zimmerman.

Q. Where did he reside? A. Lyons.

Q. Who were the other officers of the company at the time of its organization besides yourself, as secretary and treasurer,

and Mr. Stigawold, as president? A. I am not sure; I think it was M. L. Bowden, of New York, I am not sure.

Q. What was his position? A. Vice-president.

Q. Were there any other officers besides those you have now named? A. No, sir.

Q. Who was the manager of the company, that is, whose duty was it to manage its affairs? A. The president.

Q. And was Mr. Stigawold present at the office of the company usually, and actively engaged in the management of its affairs during the time he was president? A. Yes, sir.

Q. And were all matters relating to the affairs of the company finally passed upon by him? A. His advice was asked on all matters, yes, sir.

Q. Did his orders and directions with reference to the affairs of the company prevail in the company? A. I don't know that he ever made orders; if he directed anything to be done I think it was done.

Q. Who would you take your orders from? A. From the president.

Q. From Mr. Stigawold, did you not? A. From Mr. Stigawold, yes, sir.

Q. And wasn't that true in relation to everybody, so far as you knew, connected with the company? A. They surely took his advice, yes, sir.

Q. Didn't they take his orders? A. I do not know that, whether he ever ordered them to do anything.

Q. Now, someone had to have the management and control in that plant, and say what ought to be done and what ought not to be done, and who should do it; who occupied that position, and who discharged those duties? A. Mr. Stigawold.

Q. That is what I presume. Then he was the active manager of the company? A. Yes, sir.

Q. Now, what books did the company keep during the time you were the bookkeeper? A. Cash book; ledger; journal; beet ledgers, and various side books connected with the business.

Q. The company was engaged in the manufacture of beet sugar, was it not? A. Yes, sir.

Q. By that you mean sugar made from beets which were grown

upon the farms adjacent from Lyons, or from other parts of the State, which were transported to Lyons? A. Yes, sir.

Q. About what was the capacity of this plant? A. 400 to 500 tons per day.

Q. That is, of beets? A. Of beets.

Q. How much did that represent approximately in sugar? A. It varied greatly; say 12 per cent. sugar.

Q. Then of 400 tons, if my arithmetic is correct, that would be four tons of sugar to one hundred tons of beets, is that right? A. No.

Q. 12 per cent. you said, instead of four per cent.; change that; 12 tons of sugar to 100 tons of beets? A. About that, yes, sir.

Q. That is, your four hundred tons a day would run about 48 tons of sugar, is that correct? A. If we ran 400 tons a day.

Q. Now, what was the method of the company with reference to the purchase of these beets; from whom did it purchase them? A. It purchased them of the farmers of the State, by contract.

Q. Direct with the farmers; their dealings were direct with the farmers, were they? A. Yes, sir.

Q. And were these beets purchased by the company from the farmers after they were produced, or were they contracted for prior to the time of their being harvested? A. Contracted for prior to the time.

Q. And what was the season usually during which they were contracted for? A. From, say, the 1st of January until perhaps the 1st of June.

Q. That would be contracts that were made the 1st of January and February and March, that would be prior to the time of the planting, would it not? A. Yes, sir.

Q. And these contracts were usually completed by the month of June? A. Yes, sir.

Q. When were these beets usually harvested? A. Beginning the latter part of September or the forepart of October.

Q. And then they were immediately what you call sliced, and the juice taken out and reduced to sugar? A. Yes, sir.

Q. At once? A. Yes, sir.

Q. Were they stored? A. At times they were stored.

Q. How long would the stock be preserved or kept? A. It would depend greatly on the condition.

Q. Say usually, to make an average? A. I do not know that I could say how long.

Q. About how many months? A. The operations lasted from two to four months.

Q. That was what you call a campaign, was it not? A. Yes, sir.

Q. From the time the beets began to be delivered until you had used up your supply of product you called that a campaign? A. Yes, sir.

Q. That was the only time during which your plant was in active operation, was it not? A. Practically so, yes, sir.

Q. When were these beets usually paid for, at the time they were contracted for or at the time of delivery? A. Some time after delivery.

Q. After delivery? A. Yes, sir.

Q. When was the first beet sugar plant that you knew of erected at Lyons or in that vicinity? A. I knew when the first one was erected.

Q. When was that? A. In 1900.

Q. Prior to that time the farmers in that section of the State were not engaged in the production of beet sugar, were they, in the production of beets? A. Some of them were.

Q. And where were these beets shipped? A. To Binghamton and to Rome.

Q. Those were the only two other plants in the State at that time? A. Yes, sir.

Q. Eventually, do you recall during the life of the business at Lyons, what other plants there were in the State besides the Binghamton plant, the Rome plant and the Lyons plant? A. That was all.

Q. There were never any other factories in the State? A. No, sir.

Q. Do you know what the capacity of the Binghamton plant was? A. I think about the same as the Lyons.

Q. And how about the Rome plant? A. Quite some smaller.

Q. Do you recall how much smaller? A. No, I don't know about that.

Q. Was it more than one-half as much? A. I don't know that; I should say not over half as large.

Q. Then the complete capacity of all the plants in the State at any time would not exceed, say, 1,000 tons a day? A. I presume that is something near right.

Q. Let me see; that would be how many tons of sugar, 120 tons? A. 120 tons.

Q. Now, did this company, during the time you were connected with it, keep a complete file of its correspondence, that is, letters sent out and letters received? A. So far as I know, yes, sir.

Q. What did you say was the name of the company that preceded the Lyons Company, the Empire State Beet Sugar Company? A. The owning company, you mean?

Q. Yes. A. The Empire State Sugar Company.

Q. That was the first company organized at Lyons, was it not? A. Yes, sir.

Q. It was succeeded by another company, and what was its name? A. It was succeeded by the Lyons Beet Sugar Refining Company.

Q. As owner? A. Yes, sir.

Q. It was succeeded by a leasing company, what was the name? A. The Empire Beet Sugar Company.

Q. When did the Empire Beet Sugar Company lease the plant of the Empire State Sugar Company? A. That would be for the campaign of 1903.

Q. Then it only continued to operate the plant, this leasing company, for one year, is that correct? A. On its own account, yes, sir.

Q. And it was subsequently succeeded by the Lyons Beet Sugar Company? A. Yes, sir.

Q. Do you know where the records are of those two preceding companies, both the Empire State Beet Sugar Company, and the Empire Beet Sugar Company? A. I think they are both in Lyons; I am sure they are.

Q. Do you know where? A. Yes, sir.

Q. Where? A. The Empire State Sugar Company records I am quite sure are at the office of the present Lyons Beet Sugar Refining Company.

Q. Kept in the office, are they, or are they stored? A. Stored.
 Q. Where are they stored? A. In the office.
 Q. When did you last see them? A. Within a few weeks.
 Q. Who was the president of the leasing company? A. Frederick Stigawold.

Q. During its entire existence? A. Yes, sir.
 Q. Were you connected with the leasing company? A. Yes, sir.

Q. In what capacity? A. As treasurer.
 Q. And also as secretary? A. I think so.
 Q. And also as bookkeeper? A. Yes, sir.
 Q. And also as a director? A. Yes, sir.
 Q. Were you a stockholder in the leasing company? A. I think I held two shares to qualify.

Q. Who was the president of the parent company, the Empire State Beet Sugar Company? A. The first president was O. I. Thomas.

Q. A resident of Lyons? A. Yes, sir.
 Q. Who succeeded him? A. I can't say.
 Q. Who was the secretary and treasurer? A. I can't say that I never was connected with it.

Q. Now I show you book. Is this one of the books of the Lyons Beet Sugar Company? A. Yes, sir.

Q. And what is this book? A. Cash book.
 Q. Were there more than one cash book? A. Two.
 Q. This is known as cash book No. 1? A. Yes, sir.

(Said book is marked for identification Exhibit 33.)

Q. I show you another book of the Lyons Beet Sugar Company. What is this book? A. Cash book No. 2.

Judge BRUCE: I will ask that that be marked for identification.

(Marked for identification Exhibit 34.)

Q. Were these the only two cash books? A. Yes, sir.
 Q. I show you another book and ask you what that is. A. The general ledger of the company.

Judge BRUCE: I will ask that that be marked for identification.

(Marked for identification Exhibit 35.)

Q. Now during the years that you were the bookkeeper for the Lyons Beet Sugar Co., were these the only cash and ledger books for the company? A. Yes, sir.

Q. Will you explain to me the method of keeping these cash books and this ledger; your method of bookkeeping? A. I don't know just how to go at that.

Q. How did you keep the cash books? A. Entered receipts as they came in, and disbursements as made.

Q. And did these books contain absolute, complete and accurate records of all receipts of the company and all its disbursements for the period which it covers? A. I believe it does.

Q. And was this book and the other cash book and ledger correctly kept? A. I believe they were.

Q. Now in whose handwriting is this cash book? A. Mine.

Q. And this cash book there, in whose handwriting is that? A. It is mine.

Q. And is the ledger also in your handwriting? A. Yes, sir.

Q. You made all the entries? A. Probably all of them — there might be a few.

Q. In what method were the transfers made from the cash book to the ledger? A. Posting.

Q. Under names of individuals or under the names of the different subjects? A. Different accounts.

Q. You mean by that, not the accounts of individuals, but accounts like expense accounts, and so on? A. Yes, sir.

Q. Salary account and insurance and so on? A. Yes, sir.

Q. That was your method? A. Yes, sir.

Q. Your method was to enter in the cash book all receipts under the date of the receipts, and all disbursements under the dates in which they were made? A. Yes, sir.

Q. And transfer them to the ledger, not under the names of individuals, but under the names of the different departments of expense? A. Yes, sir.

Q. Now what method did you have for preserving the corre-

spondence of the company? A. Letters written were copied in letter books and letters received were filed in letter files.

Q. Were all those letter books preserved? A. I believe they were.

Q. And when you left the company were they there in the possession of the company? A. Yes, sir.

Q. And were all the letter files preserved? A. So far as I know; yes, sir.

Q. And are still there in the possession of the company? A. I think so; yes, sir.

Q. Do those letter files contain, so far as your knowledge goes, a complete record of all the correspondence received by the company? A. Yes, sir.

Q. And the letter books, do they contain a complete record of all the letters sent out by the company? A. So far as I know; yes, sir.

Q. To your knowledge have any of the letters ever been abstracted from the letter files? A. No, sir.

Q. Or were any letters sent out that were not copied in the letter books? A. Not that I know of.

Q. Will you pull your chair up to the table and take cash book No. 1. Let me ask you, was Mr. Zimmerlin connected with the company during the time you were connected with it — I am speaking now of the Lyons Beet Sugar Company. A. The latter part of it; yes, sir.

Q. For how many years? A. Why, maybe two years.

Q. You mean by that, 1909 and 1910? A. It may be a little longer. It may be 1908 — I am not sure.

Q. In what capacity? A. First as vice-president I think, and since October, 1909, as president.

Q. Prior to that time did he have any connection with the company? A. No official connection.

Q. What other connection did he have than official connection? A. He did work for the company.

Q. And what work did he do for the company? A. Why, I don't know whether I can explain. Various things he was asked to do.

Q. Well, what things was he asked to do? A. He visited

various State granges in the interests of the Bounty Bill, and did some work in Albany.

Q. And did some what? A. Some work in Albany on the same matters.

Q. He was the legislative agent of the company, in that he attended at Albany during the different sessions of the Legislature, did he not, looking after the interests of the company in connection with legislation? A. He did.

Q. And did you from time to time make payments to him of moneys for the company? A. Payments were made to him; yes, sir.

Q. By whose direction did you make these payments? A. By direction of the president.

Q. And by the president, you mean Mr. Steigelwald? A. I mean Mr. Steigelwald.

Q. Covering what period did he perform these services for the company in connection with legislation at Albany? A. I think the whole period of the company.

Q. Now, in what way was the company interested in legislation at Albany? A. They were interested in the bounty legislation.

Q. That is, from the period — and I will take that up more particularly with Mr. Zimmerlin himself, for he is probably more familiar with it than you — but see if this don't refresh your recollection in regard to it. From the year 1897 down to the year 1908, each year, there was an appropriation made by the Legislature, was there not, what was termed sugar bounty? A. Well, I am not familiar as early as that. My first connection was 1903.

Q. You were a resident of Lyons. Do you have any recollection of whether or not appropriations for bounties were made, called sugar bounties, prior to the time you actually became connected with the company? A. I have heard that there were. I have no knowledge of it.

Q. Well, would your recollection accord with my statement, that from 1897 down to 1908, appropriations were made annually by the Legislature, what were termed sugar bounties? A. All except from 1897 to 1900, I don't know that I ever heard anything about it.

Q. Then from 1900 down to 1908 your recollection is that such appropriations were made? A. I have heard that they were.

Q. Well, in later years you not only heard they were, but when you were connected with the company you knew there were, didn't you? A. Yes, sir.

Q. Now it was in connection with these acts, making these appropriations, that Mr. Zimmerlin represented that company at Albany, was it not — the company? A. Yes.

Q. And it was in connection with this work that these payments by the direction of the president were made by you to him from time to time, is that correct? A. Yes, sir.

Q. Now will you look, taking cash book No. 1, and look at page 7? A. Yes, sir.

Q. Tell me if you made a payment to Mr. Zimmerlin in connection with this work on March 9, 1905? A. Yes, sir. Well, now, wait. Not that I made it. One was made.

Q. Well, if the company made it, I will substitute the company for you. A. Yes, sir.

Q. And what was the amount of that payment? A. \$100.

Q. Will you look over the cash book record and let me know whether you find any payment made to him prior, or any record of a payment made to him prior to March 9, 1905? A. I don't see any.

Q. Now turn to page 15. Do you find an entry there under date of April 8, 1905? A. Yes, sir.

Q. Payment made by the company to Mr. Zimmerlin? A. Yes, sir.

Q. Of how much? A. \$39.

Q. Page 17? A. Yes, sir.

Q. Under date of April 10, 1905, do you find a payment there made to him? A. \$75.

Q. Look at page 21? A. Yes, sir.

Q. Under date of April 25, 1905, do you find an entry there? A. \$115.

Q. Look at page 23 under the date of May 1st, 1905. Do you find an entry there? A. \$100.

Q. Look at page 45 under the date of June 24, 1905. Do you find an entry there? A. Yes, sir.

Q. Of how much? A. \$7,174.90. I wish to say that this entry don't represent a payment, but disbursements to Mr. Steigewald.

Q. So far as your books are concerned, it was a payment to Zimmerlin? A. Yes, sir.

Q. Now look at page 75 under date of September 19, 1905. A. Yes, sir.

Q. Do you find a payment? A. \$50.

Q. Look at page 77 under the date of September 23, 1905. A. \$25.

Q. Look at page 83 under the date of October 3, 1905. A. \$35.

Q. Look at page 93 under the date of October 25, 1905. A. \$130.

Q. Look at page 149 under the date of January 23, 1906. A. \$50.

Q. Look at page 161 under the date of February 12, 1906. A. \$50.

Q. Look at page 163 under the date of February 19, 1906. A. \$50.

Q. Look at page 165 under date of February 27, 1906. A. \$75.

Q. Look at page 169 under date of March 5, 1906. A. \$50.

Q. Look at page 171 under date of March 13, 1906. A. \$50.

Q. Look at page 173 under date of March 20, 1906. A. \$50.

Q. Look at page 175 under date of March 27, 1906. A. \$50.

Q. Look at page 177 under date of April 2, 1906. A. \$50.

Q. Look at page 185, under date of April 23, 1906. A. \$100.

Q. Look at page 187, under date of April 30, 1906. A. \$75.

Q. Look at page 195, under date of May 29, 1906. A. \$40.

Q. Look at page 213, under date of July 18, 1906. A. \$300.

Q. Look at page 225, under date of September 1, 1906. A. \$756.30.

Q. Look at page 263, under date of November 26, 1906. A. \$67.

Q. Look at page 269, under date of December 3, 1906. A. \$50.

Q. Look at page 325, under date of March 26, 1907. A. \$50.

Q. Look at page 327, under date of April 1st, 1907. A. \$50.

Q. Look at page 329, under date of April 8, 1907. A. \$50.

Q. Look at page 349, under date of July 1st, 1907. A. 30.

Q. Look at page 351, under date of July 9, 1907. A. \$30.

Q. Look at page 353. A. \$185.

Q. Look at page 359, under date of August 19, 1907. A. \$1,000.

Q. Look at page 365, under date of September 7, 1907. A. \$3,000.

Q. Look at page 393, under date of November 27, 1907. A. \$522.50.

Q. Look at page 42, in cash book No. 2, being Exhibit No. 34 for identification. The other entries were in Exhibit 33 for identification, were they not? A. Yes.

Q. Look at page 42 of Exhibit 34 for identification, under date of February 4, 1908. A. \$60.

Q. Look at page 48, under the date of March 14, 1908. A. \$50.

Q. Look at page 50, under date of March 29, 1908. A. \$1,025.

Q. Look at page 52, under date of July 17, 1908. A. \$50.

Q. Look at page 64, under date of May 16, 1908. A. \$50.

Q. Look at page 70, under date of June 9, 1908. A. \$40.

Q. Look at page 90, under date of August 27, 1908. A. \$60.

Q. Look at page 116, under date of November 14, 1908. A. \$50.

Q. Look at page 142, under date of November 27, 1908. A. \$50.

Q. These payments which were made, were made from the funds of the company to Mr. Zimmerlin, were they not? A. Yes, sir.

Q. In connection with his work in connection with the legislation? A. Connected with his work at Albany; yes, sir.

Q. You have examined these books prior to coming here, have you not, in relation to these entries, and find these to be the only entries in these books of payments to Zimmerlin on that account? A. I have only checked this list.

Q. And find it to be correct? A. Yes, sir.

Q. Now, I show you a voucher, New York, August 19, 1905. Colonial Trust Company, pay to the order of H. F. Zimmerlin. \$500, signed, Frederick Steigewald. That was a payment made. was it not — that is Mr. Steigewald's signature? A. Yes, sir.

Q. And that is endorsed by Mr. Zimmerlin? A. Yes, sir.

Q. I also show you another check dated the same date, drawn on the Colonial Trust Company, New York, to the order of H. F. Zimmerlin, by Mr. Steigelwald, for \$250. That is Mr. Steigelwald's signature? A. Yes, sir.

Q. And endorsed by Mr. Zimmerlin? A. Yes, sir.

Q. I show you also a check drawn July 8, 1905, drawn on the Colonial Trust Company, to the order of Mr. Zimmerlin, for \$500. A. Yes, sir.

Q. That is Mr. Steigelwald's signature? A. Yes, sir.

Q. And Mr. Zimmerlin's endorsement? A. Yes, sir.

Q. These three checks representing \$1,250 are not found entered in the books? A. They are not the sugar company checks.

Q. Well, they are not found in these books. A. I don't know that.

Q. Look under that date. A. They are not at that date. They may be some other date, a settlement for them.

Q. These checks are not included in the amounts you have read out? A. I could not say that.

Q. Well, if they are included in the amounts you have read, which amounts are they included in, and I will show you the summary? A. I would be unable to state. I simply entered those as they were given me.

Q. The large amounts, that run from \$250 — the smallest check being \$250 — you find no entry in the book, and these are all subsequent to the large entry, \$7,174.90, which was June 24, 1905. A. Yes. It may be in some large amounts here — I don't know.

Q. Well, if they are not drawn on the funds of the sugar company they would not appear in those books. A. There may be a settlement with Mr. Steigelwald for them later.

Q. I did not ask you whether there was a settlement with Mr. Steigelwald later or a settlement before. I am not concerned in your examination with whether Mr. Steigelwald got value received for these checks or not. What I am concerned with you, sir, is to know whether or not the amounts of the checks in this appear in the books of the company? A. Not those amounts; no sir.

Q. Now, summarizing the amounts which you have stated were

paid by the company to Mr. Zimmerlin on account of his services at Albany, you find in 1905 he received how much? A. \$7,843.90.

Q. In 1906 he received how much? A. \$1,863.30.

Q. In 1907 he received how much? A. \$4,917.50.

Q. And in 1908? A. \$1,535.

Q. Making during those four years a total of what? A. \$16,159.70.

Q. And if to that were added the amount of the three vouchers which I have shown you, aggregating \$1,250, the two amounts taken together would aggregate how much? A. \$17,409.70.

Q. He also received, did he not, on December 10, 1909, \$150, being his salary as president of the company during that part of 1909? A. On account of his salary.

Q. What was his salary as president? A. I think it was \$150 per month at that time.

Q. Now, what instructions were given you by Mr. Steigelwald with reference to those payments to Mr. Zimmerlin, if any? A. I don't know of any.

Q. Did he ever say anything to you in regard to advancing the money to Mr. Zimmerlin or paying him these amounts? A. I think perhaps he has, sometimes.

Q. Well, what did he say so far as your recollection goes—give it to me in substance? A. I can't recollect it at all.

Q. Well, can't you recollect what he said? A. Not at all, no more than that I was asked to draw a check, perhaps, for his expenses.

Q. How did you know the amounts to draw? What memorandum or memoranda or instructions were given you as to the amounts from time to time? A. I was told by Mr. Steigelwald.

Q. Mr. Steigelwald told you on such and such a date to pay Mr. Zimmerlin so much money, did he? A. At times, yes, sir.

Q. Well, were there any times in which you made payments to Mr. Zimmerlin without the instructions of Mr. Steigelwald or without his approval? A. None whatever when I made the payments to him, no, sir.

Q. Then all these payments which were made and entered in here, so far as you were connected with them, were made by you under the directions of Mr. Steigelwald? A. Yes, sir.

Q. What was your understanding as to the work that Mr. Zimmerman was doing for the company in connection with legislation at Albany? A. I never had much of an understanding of it, only in a general way, he was looking after the company's interests.

Q. Looking after the company's interests in what respect? A. The Bounty bill — Bounty Law.

Q. Well, would I state it correctly, if I said that your understanding was that he was down there at Albany to see what he could do to get the Bounty Bill through from year to year? A. Well, Bounty Bill, no. Usually, appropriations through.

Q. Well, I called it the Bounty Bill. We will call it an item in the Appropriation Bill, or special appropriation for beet sugar bounty. A. He was down in that connection, yes, sir. That was my understanding.

Q. How frequently was he in Albany during the years you were connected with the company? A. How many times?

Q. Yes, generally speaking. A. Oh, nearly every week, I presume.

Q. How far is Lyons from Albany? A. 200 miles, about.

Q. And what was his custom with relation to the time that he would spend at Albany, as far as you recollect? A. Perhaps two days each week, when the Legislature was in session.

Q. He did not remain over Sunday — he went down when the Legislature convened. A. He may have.

Q. On Monday evening, and go back the latter end of the week usually — I am speaking now usually, of his custom. A. I have not any recollection on that. I know he came home frequently.

Q. He was in business in Lyons, was he? A. Yes, sir.

Q. In what business? A. Hardware.

Q. Individually or as a copartner? A. Partner.

Q. With whom? A. His brother.

Q. And had he been in business in Lyons for many years? A. A good many years; yes, sir.

Q. Did he have any other connection with the company other than this work as legislative agent, except the year when you state that he acted as president? A. I think he performed some

other service for the company. I don't know as I could state now.

Q. I mean, did he have any other connection with the company in the nature of holding any office? A. Oh no, I don't think so.

Q. Was he in the habit of standing any time at the offices of the company? A. Not at the time; no, sir. He was a frequent caller, or called occasionally.

Q. He did from time to time, I understand you to say, in order to accelerate or propagate opinion among the farmers in favor of an appropriation for beet sugar, attend the annual meeting of the Grange, is that right? A. I think he has, yes.

Q. Now, when he came back from Albany at the end of the week, did he usually go to the office of the company and talk over the affairs of the week at Albany? A. I could not say.

Q. Well, did he occasionally do so? A. I would not be apt to know that. In fact, the factory office is some distance out of town. I would not be apt to know that.

Q. Did it have two offices? A. Had an office uptown, yes, sir.

Q. And had an office at its factory some distance from town? A. Yes, sir.

Q. About how far? A. Something over a mile.

Q. And also an office in the town? A. Yes, sir.

Q. Where were you located? A. At the factory office.

Q. And who took charge of the office in town? A. Mr. Steigelwald was there, and his stenographer, I guess, took charge.

Q. Mr. Steigelwald took charge of the office in connection with his office help? A. He was at both offices.

Q. But his principal time was spent in the town office? A. It depended on the time of the year.

Q. I presume during the campaign, as you call it, his time was spent largely at the factory? A. Yes, sir, and other times, more or less.

Q. Did you spend any time at the town office? A. Not of any account.

Q. Then as to whether or not Mr. Zimmerlin made reports from time to time to Mr. Steigelwald as to the progress of affairs at Albany, you have no knowledge? A. I have no knowledge.

Q. Did you ever hear him make any reports to Mr. Steigelwald?
A. I never did.

Q. Did he ever say anything to you as to how affairs were progressing in Albany? A. I don't recollect that he did, I don't think he did.

Q. Did he ever discuss with you the proposition as to the amount the State would appropriate, or what the prospects were in regard to the amount of the appropriation? A. I don't think he ever did.

Q. Did Mr. Steigelwald ever talk with you concerning the question of the appropriation by the State for sugar bounties?
A. I think perhaps it has been mentioned.

Q. What did he say, if you can recall anything? A. I can't recall it.

Q. Generally, did he discuss with you anything in relation to Mr. Zimmerlin's work down there, what he was doing, and how he was doing it? A. No, sir, I don't think he ever did.

Q. Did you personally ever pay any money to any member of the Legislature or any candidate for the Legislature in connection with any matter pending in the Legislature? A. No, sir.

Q. Did you ever have any knowledge of any payments made to any member of the Legislature or any candidate for the Legislature in connection with matters pending at Albany? A. I never had any knowledge of it.

Q. Did you ever make any payment to any employee of the Legislature? A. No, sir.

Q. In connection with matters pending before the Legislature? A. No, sir.

Q. Did you individually, or on behalf of the company, make any payments as I have indicated? A. No, sir.

Q. Did you individually, or on behalf of the company, make any payments to any political organization either local or State, at any time? A. Certainly not State, I don't think ever anything locally. If at all, it was a very small amount, but I don't remember anything.

Q. Now, let us get your recollection on that. A. I never paid anything.

Q. Did you ever make any contributions on behalf of the

company, or were you the agent of the company in making any contributions either to the local campaign fund, or to the State campaign fund? A. No, sir.

Q. Did you have any knowledge of Mr. Steigelwald or anyone else connected with the company making any contributions to either the local campaign funds of either party, or to the State? A. No, sir.

Q. Well then, why did you say, if there were any, they were very small? A. I said it for this reason, I didn't know whether anything was ever paid locally or not, but I don't think there was.

Q. If there were any amounts paid, large or small, did you have any knowledge of it or connection with it? A. No, sir.

Q. Were you individually, or have you any knowledge of any officer of the company having been solicited by any member of the Legislature or any employee of the Legislature for the payment of any money for any purpose whatsoever? A. No, sir.

Q. Were any solicitations made for payments of money by any candidates for office or persons connected in politics locally in Wayne county, or connected with State politics? A. No, sir. not to my knowledge, never.

Q. You said you were a director of the company? A. Yes, sir.

Q. Now, what was said at the meetings of the board of directors at any time in connection with the work of Mr. Zimmerlin at Albany? A. I don't think it was ever mentioned, I don't remember it.

Q. Did you keep the record of the meetings of the executive committee? A. Well, we didn't have an executive committee; we simply had a board of directors.

Q. Did you keep the record of the meetings of the board of directors? A. Yes, sir.

Q. Now, at any of the meetings of the board of directors at which you kept the minutes, or which you attended, what was said by Mr. Steigelwald or by anyone else in relation to matters of legislation pending at Albany? A. I don't recall that anything was ever said, I don't think it ever was.

Q. Were not these items of payment ever brought up in a

meeting of the board of directors, these payments that were made to Mr. Zimmerlin? A. No, sir.

Q. Were they never discussed there? A. No, sir.

Q. Did the treasurer make his report from time to time to the board of directors? A. Once a year, a condensed report.

Q. Did this report which you made at the close of each year show these payments made to Mr. Zimmerlin on account of his work at Albany? A. Only made a condensed report.

Q. You say a condensed report. In what part of the report, or in what item did that appear? A. That would not appear in any place; it was simply a balance sheet.

Q. You only stated the amount of cash on hand and the amount of debits? A. That is about all.

Q. Didn't any of the directors of the company inquire as to the finances of the company any more particularly than that? A. No, sir.

Q. Who were the directors of the company? A. There never were but three.

Q. Who were they? A. Mr. Steigelwald and myself, and the third one was different people from time to time.

Q. Now, let us take the third one — you mean during the entire time you were connected with the company, you and Mr. Steigelwald composed two of the board of directors? A. Yes, sir.

Q. Who was the third? A. I mean to say Mr. Steigelwald up to the time I stated, that is, October, 1909.

Q. Prior to that time, who was the third? A. Mr. Bouden at the time.

Q. Who is Mr. Bouden? A. He is a gentleman who lives in New York, I don't know him.

Q. What is his first name? A. M. L.

Q. Do you know what the M. stands for? A. No, sir.

Q. Do you know what his address is? A. No, sir.

Q. How long did he continue as a member of the board of directors? A. I can't say now.

Q. Who preceded him, or succeeded him? A. I can't tell without the minute book. I think Mr. Austin, perhaps.

Q. (Showing book to witness.) Is this the minute book? A. Yes, sir.

Q. Look at it and tell me who was the third director from time to time? A. It will take some little time.

Q. Just take the time, let us have it? A. Mr. Boudin was the first; W. B. Austin was the second.

Q. How long did Mr. Boudin continue as a member of the board of directors, when did his service begin and when did it end? A. From July 29, 1904.

Q. When did it terminate? A. I think this is the date without going through the whole book, the sixth of April, 1907.

Q. What was his first name? A. I don't know.

Q. Doesn't it appear there? A. It is simply M. L. Boudin.

Q. Does his address appear there? A. No, it does not.

Q. Was there any other director excepting those you have named? A. Not at that time. There were only three directors in the company.

Q. Did anyone else ever serve upon the board of directors, except the two you have named, yourself and Mr. Steigelwald? A. W. E. Austin was elected apparently on, I think it is March 1, 1907. He served until the 7th of April, 1908 — I think that is correct.

Q. Then who was elected to succeed him? A. Mr. H. J. Zimmerlin.

Q. How long did Mr. Zimmerlin serve as a director? A. During the life of the company.

Q. Until the company went into bankruptcy in the spring of 1910? A. Yes, sir.

Q. Do you recall whether Mr. Boudin or Mr. Austin ever made any inquiries as to the moneys which were being expended by the company with reference to legislation? A. I don't recall any such thing.

Q. Was the fact of such expenditures being made ever brought to their attention? A. Not that I know of.

Q. Did anything appear in the treasurer's report from time to time which would have called it to their attention, the fact that these expenditures were being made? A. There was no treasurer's report, except at the annual meeting, as I stated. There was nothing in that which would call it to their attention.

Q. Now, give me the best of your recollection whether or not

any of the meetings of the board of directors of this company during the time you were connected with it, this question of the expenditure of money in connection with legislation was ever mentioned or discussed? A. I don't recall that it was ever mentioned.

Q. When the company went into bankruptcy in the spring of 1908, was a voluntary or involuntary petition filed? A. Voluntary.

Q. Was the company adjudicated bankrupt? A. It was.

Q. Was a receiver appointed? A. Yes, sir.

Q. Who was appointed receiver? A. A temporary receiver.

Q. All receivers in bankruptcy are temporary. A. I don't recall the name. He was only on the matter two or three weeks.

Q. Was a trustee in bankruptcy subsequently elected by the creditors? A. Yes, sir.

Q. Who was elected trustee? A. C. W. Rice, of Geneva.

Q. Before what referee in bankruptcy were the proceedings taken? A. Judge Charles A. Halley.

Q. Where does Judge Halley reside? A. Seneca Falls.

Q. Has there been since that time any sale of the plant of the company at Lyons? A. Yes, sir.

Q. When did the sale take place? A. I think on the 24th of September.

Q. Was there a private or public sale of the plant? A. A public sale.

Q. Who purchased the plant? A. C. M. Warner.

Q. Where does Mr. Warner reside? A. Syracuse, and New York, too, I think.

Q. Do you know whether it is the intention of Mr. Warner to continue the plant at Lyons? A. I am quite sure it is not.

Q. Do you know what the purpose of Mr. Warner is with reference to the plant? A. I think he intends to remove it.

Q. And to remove it to what place? A. To California.

Q. There are no other plants at Lyons, and never have been, other than the one you have mentioned? A. No, sir, no other cigar factories.

Q. Now, in 1908, the Agricultural Law was amended, was it not, by repealing the provisions with reference to sugar bounties?

A. I believe that was the time.

Q. And no bounties have been paid since that time? A. No, sir.

Q. Are sugar beets now produced by the farmers in the section of the State around Lyons? A. No, sir.

Q. Have they been since the plant ceased its operations? A. No, sir.

HARRY F. ZIMMERLIN, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Zimmerlin? A. Lyons, New York.

Q. What is your age? A. Fifty-four.

Q. What is your business? A. Hardware merchant.

Q. Has this business been carried on at Lyons? A. Yes, sir.

Q. How long have you been engaged in the hardware business at Lyons? A. Twenty-five years.

Q. Individually or in copartnership? A. As a firm, Zimmerlin Brothers.

Q. Yourself and your brother? A. Yes, sir.

Q. Have there ever been any other members of the firm? A. No, sir.

Q. Have you ever had any other business during that time other than the hardware business? A. I was appointed Postmaster in 1904.

Q. How long did you serve? A. Five years.

Q. When did you first become connected in any way with the Lyons Beet Sugar Refining Company? A. As an officer.

Q. In any respect. A. I was appointed weigher in 1900 by the State.

Q. That is, from time to time under the statute, there were a certain number of persons appointed by the Commissioner of Agriculture for the purpose of weighing the amount of sugar manufactured at each of the manufacturing plants—is that correct? A. No, that is not correct.

Q. What is correct? A. I was appointed as weigher to supervise the assistants. There were perhaps twenty-five or thirty

pointed. To supervise and give an accounting of the number of tons of beets drawn to the factory. The Department had a sugar weigher who reported at the factory and kept an account of the number of pounds produced by the factory.

Q. Where were your duties to be discharged? A. At the factory.

Q. At what factory? A. At the Empire State Sugar Company, it was at that time.

Q. You were appointed weigher then, for that factory? A. Yes, sir.

Q. You had no connection with the factory at Rome, or with the one at Binghamton? A. No, sir.

Q. What was your salary as weigher? A. Five dollars a day.

Q. How long did the service continue, during the year or during the campaign? A. During the campaign, perhaps ninety days.

Q. The campaign would ordinarily extend over about three months? A. About eighty to ninety days, I think.

Q. How long did you continue as a weigher? A. For that campaign only.

Q. When did you first have any connection with the Lyons Beet Sugar Refining Company? A. In 1902.

Q. What was that connection? A. In connection with the bounties.

Q. Well, give me the circumstances under which that connection commenced? A. I was asked to go to Albany to see that the beets were placed in the supply bills, and get the amounts to see that they were placed there, either the appropriation or the supply bill, I can't remember which, whether it was the appropriation or the supply bill.

Q. Do you know when the State began to award bounties to the manufacturers of sugar or to the producers of sugar beets? A. On or about 1897.

Q. I want to take up with you the course of that legislation and see if I have it correctly. I show you the Session Laws, volume 1, of the one hundred and twentieth session, 1897, and call your attention to chapter 500, being an act in relation to agriculture. By this act, it appears, does it not that the Agricultural

Law, which consisted of chapter 338, of the Laws of 1893, was amended by adding article 5, which provided for the promotion of sugar beet culture — is that not correct? A. Yes, sir.

Q. And appropriated the sum of \$25,000, or so much thereof as might be necessary, out of the moneys in the treasury not otherwise appropriated, to be paid in the manner prescribed by the act for the purpose of making it effectual — isn't that correct? A. Yes, sir.

Q. Now, under that act — this was really the beginning of the policy on the part of the State, of awarding a bounty for the production of sugar beets, was it not? A. Yes, sir.

Q. Now, under that act, it provided, did it not, that the bounty should be paid to the manufacturer of the sugar? A. It did.

Q. And in what amount? A. One cent a pound on all sugar manufactured.

Q. That is, the provision of the act was that a bounty of one cent a pound for sugar manufactured should be paid to the manufacturer — is that correct? A. Yes, sir.

Q. Now, I call your attention to the Laws of 1898, chapter 19, which is the following year, you will note. The provisions of the former act were continued, and the sum of \$50,000 appropriated for the purpose of making it effectual — isn't that correct? A. That is correct.

Q. This act also provided, did it not, "This appropriation made by the Legislature in continuation of the policy adopted at the session of 1897, in the faith and with the declared purpose of making direct appropriations from the State for a successive period of not less than five years, from said first appropriation in aid of the permanent establishment of the beet sugar industry of New York" — is that correct? A. Yes, sir.

Q. That five years started in 1897 would expire in 1902, would it not? A. Yes, sir.

Q. Now, I also call your attention to chapter 13, of the Laws of 1899. By this act, the sum of \$30,000 was appropriated for the purpose of sugar bounties in the State, was it not? A. Yes, sir.

Q. And it also re-enacted the declared purpose of making direct appropriations from the State for a successive period of not less than five years from the first appropriation? A. Yes, sir.

Q. I now call your attention to the Laws of 1900, chapter 344. Is that act similar to the act of 1899, was it not, and made an appropriation of \$50,000, and reaffirmed the policy of the State to continue it for five years from 1897? A. Yes, sir.

Q. I call your attention to chapter 331, of the Laws of 1901. Is that act similar to the two preceding acts, was it not? A. Yes, sir.

Q. And appropriated the sum of \$100,000 for the purpose of making the act effectual, and also again reaffirms the policy of continuing it for five years from 1897? A. Yes, sir.

Q. I now call your attention to the Laws of 1902, chapter 240. Now, this act appropriated \$50,000, did it not, for the purpose of sugar bounties? A. Yes, sir.

Q. You note, do you not, that by section 2, which carried the appropriation, the amount to be paid to the manufacturer of the sugar was reduced from one cent a pound to one-half cent a pound? A. One-half cent a pound, yes, sir.

Q. Prior to that time, since 1897 down to 1902, it had been one cent a pound? A. Yes, sir.

Q. And by this act it was changed to one-half a cent a pound? A. Yes, sir.

Q. The money being still paid to the manufacturer of the sugar? A. Yes, sir.

Q. Now, I call your attention to chapter 577 of the Laws of 1903. This act simply made an appropriation of \$30,000, did it not, for the purpose of making the former act effectual, continuing the rate of one-half cent a pound payable to the manufacturer? A. Yes, sir.

Q. I call your attention to chapter 670 of the Laws of 1904, which made an appropriation, did it not, of \$60,000, for the purpose of beet sugar bounties, the money still payable to the manufacturer of the sugar at the rate of one-half cent a pound? A. Yes, sir.

Q. I also call your attention to chapter 179 of the Laws of 1904, just having called your attention to chapter 670, being the Supply Bill of that year. Now, you note by chapter 670 of the Laws of 1904, \$60,000 was appropriated, and in the Supply Bill of that year, being chapter 729, there was an appropriation for

deficiencies in the amount of money to be paid to beet sugar manufacturers in the State of New York that manufactured sugar during 1903, as provided in the Agricultural Law, amounting to \$9,913.57? A. Yes, sir.

Q. That was in addition to the \$60,000 appropriated by chapter 670? A. Yes, sir.

Q. I call your attention to chapter 759 of the Laws of 1905. At this time the five-year period had more than expired, had it not? A. Five years, and three years additional.

Q. Consequently, the declared purpose of the State in 1903 no longer existed upon the statute books, the time of that declared purpose had expired, had it not? A. Yes, sir.

Q. By this chapter 759 of the Laws of 1905, there was an entire revision of the whole subject of the payment of bounties by the State for the raising of beet sugar, was there not? A. Yes, sir.

Q. And the most striking change of all was that the bounty was no longer to be paid to the manufacturer of beet sugar, but was to be paid to the grower of the beets. A. Yes, sir, the grower of the beets or his assigns.

Q. And on the basis of \$1 per ton, was it not? A. Yes, sir, \$1 per ton.

Q. And in those cases where the beets were grown in the State of New York, and manufactured into sugar in the State of New York, and where the sum paid to the grower did not exceed \$5 a ton — wasn't that correct? A. No, less than \$5 a ton.

Q. Not less than \$5 a ton? A. Yes, sir.

Q. In other words the sugar must be manufactured in the State of New York, the manufacturer must pay the farmer at least \$5 a ton, and in addition to that the farmer was to receive \$1 a ton bounty, is that correct? A. No, sir.

Q. What is correct? A. He or his assigns, he was to receive \$1 per ton on beets.

Q. In any event? A. In any event.

By Assemblyman FOLEY:

Q. Was the manufacturer always the assignee? A. Yes, sir.

Judge BRUCE: We will return to that later.

By Judge BRUCE:

Q. I call your attention to chapter 700 of the Laws of 1905, the same year, and you find, do you not, being the deficiency, the Appropriation Bill, that there was an appropriation of \$18,850.53, being the unexpended balance from the former appropriation, which was reappropriated for sugar beet culture for the year 1905; isn't that correct? A. That is correct.

Q. I now call your attention to chapter 686, Laws of 1906, being the Appropriation Bill, or the Supply Bill rather. Now, in that bill there was an appropriation, was there not, of \$31,280.09 for payment to the Lyons Beet Sugar Company for the season of 1905? A. Yes, sir.

Q. The preceding year, wasn't that correct? A. That is correct.

Q. And also an appropriation of \$15,000 generally for carrying out the provisions of the act? A. Yes, sir.

Q. That is for sugar bounty? A. Yes, sir.

Q. This \$31,280.09 was appropriated directly to the Lyons Beet Sugar Company? A. Yes, sir.

Q. I now call your attention to chapter 578, Laws of 1907, which is the Supply Bill, and by that bill there was an appropriation, was there not, of \$41,444.06 for the deficiency in the season of 1906? A. Yes, sir.

Q. I now call your attention to chapter 466, Laws of 1908. By this chapter — this is the Supply Bill for that year — in that there was a provision, was there not, for an appropriation of \$33,780.31, for deficiency for the season of 1907? A. Yes, sir.

Q. It seems that after 1905 most of the appropriations were made, were they not, for the deficiency for the preceding years? A. Yes, sir.

Q. Prior to that time it seemed to have been the policy to make direct appropriations to cover the production for the coming year; is that correct? A. That is correct.

Q. Now, by chapter 215, to which I called your attention, of the Laws of 1908, they repealed, did they not, the Sugar Bounty Act; chapter 215, Laws of 1908, became a law May 6th, 1908, with the approval of the Governor, isn't that true? A. Yes, sir.

Q. And that was the end of the sugar beet bounty business in this State, was it not? A. Yes, sir.

Q. What we have gone over is in effect a history of the legislation in the State from 1897, when it was inaugurated, down to 1908, when it was repealed, with reference to the appropriation of State moneys as bounties for sugar beet culture? A. Yes, sir.

Judge BRUCE: Before I take up the main part of the examination, as we have only seven minutes left before the adjourning hour, I would like to ask to take a recess now.

Chairman MERRITT: The Committee will stand in recess until 2 o'clock. All witnesses will be present at that hour.

Recess until 2 P. M.

AFTER RECESS.

2 P. M.

HARRY F. ZIMMERLIN, resumed.

By Judge BRUCE:

Q. Mr. Zimmerlin, summarizing the appropriation made by the Legislature during the years 1897 to 1908, inclusive, we have, do we not, in 1897, \$25,000 appropriated; in 1898, \$50,000; in 1899, \$30,000; in 1900, \$50,000; 1901, \$100,000; 1902, \$50,000; 1903, \$30,000; 1904, \$69,913.57; in 1905, \$18,850.53; in 1906, \$31,280.09, and a general appropriation of \$15,000, making \$46,280.09 in 1906? A. Yes, sir.

Q. In 1907, \$41,444.06, and in 1908, \$33,780.31, making a grand total appropriated during the entire time during which the State continued the experiment of paying bounties on beet sugar of how much? A. \$545,268.56.

Q. Do you know whether or not the plant at Binghamton is in operation? A. It is not in operation.

Q. Is the one at Rome in operation? A. It is not.

Q. There are no plants in operation in the State, are there? A. None at present.

Q. And have been none since 1908 when the law making ap-

appropriations for the bounty was appealed? A. That is not correct, no.

Q. How long after 1908 did they continue, any of them? A. During the season of 1909.

Q. One campaign after that time? A. Yes, sir.

Q. When did you first become an officer in the Lyons Beet Sugar Company? A. April 7th or 8th, 1908.

Q. And to what office were you then elected? A. Vice-president.

Q. Were you not also elected at the same time a director? A. Yes, sir.

Q. Had you been a director or held any office in the company prior to that time? A. Not to my knowledge.

Q. Who was president during the time that you were connected with the company? A. Mr. Steigelwald.

Q. And who was the secretary and treasurer? A. Mr. Multer.

Q. Did you finally become president of the company? A. I did, yes.

Q. When were you elected? A. On October 15th, 1909.

Q. How long did you continue president? A. Up to the time of the bankruptcy proceedings.

Q. Which was in the spring of 1910? A. Spring and summer of 1910.

Q. Did you at any other time hold any other office in this company other than director, vice-president, and president, as you have just now described? A. I did not, no.

Q. I show you the two cash books and the ledger of the company, being Exhibits 33, 34 and 35 for identification. Have you seen those books before? A. I have not.

Q. You did not make any of the entries in those books? A. No, sir.

Q. None of them were made under your direction, were they? A. Not at all.

Q. Did you have any knowledge of the bookkeeping of this company at any time? A. I did not.

Q. Until you were elected president? A. I did not.

Q. You did after you were elected president I presume? A. Very faint knowledge, if any.

Q. When did you first perform any services for the Lyons Beet Sugar Company? A. The Lyons Beet Sugar Company?

Q. Yes. A. 1904, or 1905 — 1905 rather; the Lyons Beet Sugar Company was organized in 1905.

Q. Did you ever perform any services for the Empire State Beet Sugar Company, which was the parent company? A. I did, yes, sir.

Q. When did that service commence? A. 1901.

Q. And was that the first time that you had rendered any service whatever in connection with any beet sugar industry? A. It was.

Q. Tell me the circumstances under which this employment commenced? A. I was asked to go to Albany to see that the appropriations were furnished in the Supply or Appropriation Bills.

Q. Who asked you to go? A. I cannot say now who did ask me at that time.

Q. Who was president of the company at that time? A. Mr. Thomas.

Q. Did Mr. Thomas ask you to go? A. I do not recall whether he did or not.

Q. What other officer of the company or person interested in the company asked you to go? A. It might have been Mr. Scott.

Q. Who was Mr. Scott? A. He was treasurer and manager of the company; not manager, but treasurer.

Q. What was his first name? A. Seymour Scott.

Q. Where does he reside? A. I hope in heaven now.

Q. When did he die? A. He died several years ago.

Q. Did he reside in Lyons at that time? A. He did, yes, sir.

Q. Now, about what time of year was it that you were requested to go to Albany to look after the placing of an appropriation in the Supply Bill for the bounty? A. I cannot furnish any date for that.

Q. How soon after the organization of the Legislature? A. Perhaps not very early.

Q. In what month would you say, assuming that the Legislature convened in January of that year? A. I should say in March, or April perhaps.

Q. Give me as nearly as you can recollect the substance of the conversation? A. With whom?

Q. With whoever suggested your going there? A. I do not know that I had any particular conversation with anyone at that time; I simply went there to see that the appropriations were entered; I would usually go to the department and see whether they had the amounts correct.

Q. Wasn't there someone connected with the company or interested in it that suggested to you they would like to have you go and perform this service? A. They did.

Q. And whom do you think that was? A. It might have been Mr. Scott.

Q. What do you think he said; give as near as you can now recollect the substance of what was said? A. He asked me to go to Albany and see the proper appropriations were furnished, or appropriations enough to cover the amount of bounty that would be due the company.

Q. Did you suggest then that you should go or did he suggest to you that you should go? A. He suggested this.

Q. What did he suggest that you should go for? A. Simply to see that the amounts were correct; to see that they were in the proper Appropriation Bill.

Q. You mean the amounts for 1901? A. 1901, yes.

Q. Now, the appropriation for that year was \$100,000? A. Yes, sir.

Q. What did you mean by seeing that the amounts were correct? A. Seeing that the amounts, that there was enough appropriated to cover.

Q. How were you to see to that, not being a member of the Legislature, in what way were you to see to it that a sufficient amount was appropriated? A. I would know the amount of sugar manufactured at that time, and would naturally know the amount of money required to cover that.

Q. Who were you to talk with in regard to it? A. No one in particular at that time.

Q. Did he suggest anyone in particular that you should see and talk with in regard to it? A. I do not think he did.

Q. Did you suggest to him anyone whom you thought you

would see and talk with that might have influence in the matter?

A. No, not at that time.

Q. Well, now, you think you went down how soon after the convening of the Legislature, about what month? A. Perhaps in the latter part of the legislative term; either March or April.

Q. And when you went down there what did you do—let me go back—I withdraw that—did he say anything to you or you to him in regard to any compensation you were to receive?

A. He did not.

Q. Nothing said whatsoever? A. No, sir.

Q. Did you ask him what compensation he was going to give you for those services? A. I did not.

Q. Did you suggest that you should receive a compensation? A. I did not.

Q. Did you say anything to him in regard to the payment of your expenses in traveling down there and remaining there? A. I told him that I would have to have my expenses paid.

Q. And what did he say? A. He said, all right.

Q. Did you state to him what those expenses would be, consist of? A. My actual expenses.

Q. Did that refer simply to hotel bills and traveling expenses? A. It did.

Q. Did you suggest to him that there might be other expenses? A. I did not.

Q. When you went down there what did you do? A. I think I made that statement before that I went to the department and then went up to the Capitol to see that the appropriation bills—to get the appropriation bills, and to see there was enough in the appropriation bill to cover the amount necessary to pay the bounty, which was one cent a pound on sugar produced.

Q. At that time when you went down had the Appropriation Bill already been introduced? A. Perhaps not the first time I went down.

Q. Did you talk with the Commissioner of Agriculture? A. I may have said something to him.

Q. Did you, or didn't you, if you now recollect? A. I went there, I naturally would call there.

Q. Were you stating to him the number of tons of beets that

had been produced during that year, that is, the preceding year, 1900, or were you giving him an estimate as to what you thought would be the number of beets produced during the year 1901?

A. I cannot recall any conversation that I had with him.

Q. And what was the appropriation to be based upon, on the production of 1900 or the prospective production of 1901? A. It was based upon the production of sugar during the campaign of 1900 and 1901; beets grown in the season of 1900 in other words, or sugar made from the beets grown in the season of 1900.

Q. Then it was simply an estimate on what amount of sugar would be produced, was it? A. Yes, sir.

Q. Whom did you see up at the Capitol? A. I possibly called on the Senator of our district.

Q. Who was the Senator of your district at that time? A. John Raines.

Q. Did you call upon him or didn't you? A. I think I did.

Q. And what did you say to the Senator? A. I asked him to see that these appropriations were provided for.

Q. And what did he say? A. He said he would.

Q. Now, this was the first time you were down at Albany? A. Yes, sir.

Q. During that season. Well, did you go down again? A. I may have gone down several times. I have no recollection.

Q. You mean by that, different weeks you went down? A. Between that time and the time the Legislature adjourned.

Q. The Legislature adjourned in the year 1901 on April 23rd. How many times do you think you went down? A. I could not state.

Q. During that session of the Legislature? A. I say, I could not state.

Q. Do you think you were down every week? A. I have no recollection of how many times I was there.

Q. Each time you went down, did you see Senator Raines? A. I have no recollection of that.

Q. Well, you saw someone when you went down, didn't you? A. Perhaps so.

Q. Whom did you see beside Senator Raines on any visit during the session of the Legislature of 1901? A. No legislator.

Q. Excepting Senator Raines? A. Excepting Senator Raines, at that time.

Q. Well, if the Senator told you he would see that the appropriation was made, why did you continue to go down from time to time until the close of the session? A. No other reason only to see that it remained there perhaps, the appropriation.

Q. Well, now, in 1901, the appropriation that was made that year of \$100,000, do you recall whether that was included in the General Appropriation Bill, or whether a special act was passed for that? A. I can't recall that.

Q. Well, the fact is, that a special act was passed for that purpose. Now do you know who drafted the bill? A. I do not know.

Q. Did you prepare it? A. I did not.

Q. Was it drafted by any of the attorneys or representatives of the sugar company? A. No, sir.

Q. Do you know whether it was drafted by any of the attorneys for the other companies? A. I could not say.

Q. It appears from the Session Laws of that year that the bill became a law on April 12, 1901, which would be some time before the adjournment of the Legislature. Does that refresh your recollection as to how many times you visited Albany in 1901? A. No, it does not.

Q. You testify, as I understand it, that you talked with no one except Senator Raines in 1901? A. In regard to the appropriation, no other legislator.

Q. Did you talk with anyone employed by or connected with the Legislature outside of being a member of it? A. I did not.

Q. Well, now, what money did you receive from the company for the services you rendered in 1901? A. In 1901? I have no recollection.

Q. Can you get me any estimate as to how much you received? A. I could not.

Q. Did you receive your expenses? A. I did.

Q. In addition to that, did you receive a compensation for your services? A. I did not.

Q. You received only your expenses? A. That is all.

Q. Of what did your expenses consist? A. Hotel expenses, traveling expenses.

Q. Were there any other disbursements? A. Not any others, no, sir.

Q. Did you pay any money during the session of 1901 for any services rendered during the session of 1901 to Senator Raines or any member of the Legislature? A. I did not.

Q. Did you pay any money during that session for services rendered during that session to any employe of either house of the Legislature? A. I did not.

Q. Did you, on behalf of the company or personally, make any contributions to any political party or organization? A. I did not.

Q. During the year 1901? A. I did not.

Q. Did you see Senator Raines after the passage of the bill? A. I have no recollection.

Q. Did you see him after the adjournment of the Legislature? A. That I have no recollection of.

Q. Did you go down to Albany again after the passage of the bill during the session of 1901? A. I did not.

Q. What other services did you perform for this company during the session of 1901? A. Not any other.

Q. Did your services terminate with the passage of the act? A. At that time; yes, sir.

Q. Give me your best judgment as to the amount of money you received from the company, you say for expenses, during that session of 1901? A. I have no recollection of it now.

Q. What would be your best recollection? A. Perhaps a very small amount. Perhaps \$100 or \$150, perhaps.

Q. And \$150 covered your traveling expenses for that year, and hotel bills? \$100 or \$150? A. Yes, sir.

Q. Well, now, coming to the year 1902, were you employed by this company in 1902? A. In the same capacity; yes, sir.

Q. Give me the circumstances connected with that employment? A. Identical with 1901.

Q. With whom did you talk? A. Talked with the Senator, perhaps.

Q. I know, but first let us take up the question of employment. How did you come to go down to the session of the Legislature of 1902? A. Oh, I did not understand the question. Why, I think at the request of Mr. Scott.

Q. At the request of Mr. Scott. Well, did not you feel that you had done pretty much your duty in having volunteered and gone down in 1901 and not having received any compensation, simply receiving a small amount for your expenses? A. I had not thought of it in that sense, no.

Q. What was said in regard to compensation in 1902? A. There was nothing said.

Q. Did you approach Mr. Scott or did Mr. Scott approach you? A. Mr. Scott asked me, asked me if I would go.

Q. Was it before or after the Legislature convened? A. After.

Q. Well, what did you say when he asked you to go. Did not you mention the question of compensation? A. I did not.

Q. Did you state that you would then go down simply for your expenses? A. I said I would, if they paid my expenses.

Q. Well, did you go down? A. I did.

Q. Whom did you see? A. Why, I called on the Senator while I was there, during that time.

Q. How long was this after the Legislature convened? A. I could not state.

Q. What would be your best recollection, assuming that it convened early in January? A. The latter part of the legislative session.

Q. You went down and saw the Senator. Do you remember where he was when you saw him? A. I could not state where I met him. I presume somewhere in the Capitol.

Q. What did you say to him? A. I asked him if he would not please look after the appropriations; see that they were inserted in the bills.

Q. Going back again a moment to 1901, the previous year, let me ask you this: Were there legislative representatives of the Binghamton Company and the Rome Company there? A. Why, I think, Mr. Rogers. There was a Mr. Rogers, I think, connected with the Binghamton Company that came to Albany occasionally.

Q. What was his first name? A. I can't recall that. I simply know that his name was Rogers.

Q. Did you meet him? A. I met him.

Q. What kind of a looking man was he? A. Rather stout man, to my recollection.

Q. Tall or short? A. Medium sized man.

Q. A smooth face or beard? A. I could not tell you that.

Q. Dark or light? A. That I have no recollection of now. I only met him two or three times.

Q. Do you recall his first name? A. I cannot.

Q. Do you recall his business? A. I haven't any knowledge of that.

Q. Was he a sugar man or a lawyer? A. That, I could not state.

Q. Well now, in 1902, when you went down, did you meet other representatives of the other companies, say the Rome Co., and the Binghamton Co.? A. The Rome Company I think was out of existence at that time. That is my recollection.

Q. There were no companies left in the State after 1901, excepting the Binghamton Co., and the Lyons Co.? A. That's all.

Q. Well now, did you meet in 1902 the representative of the Binghamton Company? A. I can't recall that.

Q. Going back again, in 1901 did Mr. Rogers talk with Senator Raines, do you know? A. I haven't any recollection at all about it.

Q. Did you and he talk with any members of the Legislature together that year? A. We did not, no, sir.

Q. When you saw the Senator in 1902, and asked him if he would attend to this matter of the appropriation, what did he say? A. He said he would.

Q. How frequently were you down again after that time? A. I cannot recall how many times I was there during that session.

Q. Do you recall whether the amount appropriated that year, 1902, which was \$50,000, was included in the Appropriation Bill or was appropriated by special act? A. I have no recollection of that.

Q. You attended to the drawing of these acts for this appropriation, these bills? A. That, I could not state.

Q. Who introduced the bill in 1901, going back to 1901? A. I have no recollection of that.

Q. Was it introduced by Senator Raines or was it introduced by some other Senator? A. I could not state.

Q. Was it introduced in the Senate and also in the Assembly, or only in the Senate? A. That I have no recollection of.

Q. Who was your Assemblyman at that time, the Assemblyman representing the county of Wayne? A. In 1901?

Q. Yes. A. I cannot positively state who was Assemblyman at that time. Mr. Griffith was Assemblyman some time.

Q. Did the Assemblyman representing your county introduce the bill in the Assembly in 1901? A. I have no recollection of that.

Q. Who introduced the bill in 1902? A. I have no recollection.

Q. Did you pay any attention to the drafting of the bill or the introduction of the bill? A. I did not.

Q. To whom did you refer that to? A. I did not instruct anybody or leave it to anybody.

Q. Did you ever know who drew the bill, who introduced the bill? A. I did not.

Q. Why, you were the agent of this company down there for week after week, spending the money of the company, traveling expenses, looking after legislation, did you not go back and report to the president of the company as to whether the bill had been introduced and who introduced it, and the position of the bill? A. I may have reported at the time, but I have no recollection who did it.

Q. Did you when you came back from time to time make reports to the president or other officers of the company as to what you had done down there? A. Perhaps I did.

Q. Well, did you or not? A. I did, to my best recollection.

Q. Does that refresh your recollection so you can now recall who introduced the bill in 1901 and 1902? A. I could not furnish that.

Q. Did the attorneys of the sugar company draft these bills? A. They did not.

Q. Were they given to you to take down and have introduced? A. They were not.

Q. Do you recall what time the Legislature adjourned in 1902? A. I have no recollection of the date.

Q. It adjourned on the 27th of March, 1902, and it appears from the Session Laws which I have already shown to you for that year that this appropriation was made by special act, chapter 240 of the Laws of 1902, as the evidence already shows, and that it

became a law the 26th of March, 1902, and that the Legislature adjourned the following day, or the 27th. Now does that refresh your recollection? A. As to what?

Q. As to what you did or who introduced the bill. A. I have no recollection of who introduced the bill.

Q. That year the bill was running a pretty close race, only got through the day before the session adjourned? A. It appears so.

Q. Would that refresh your recollection as to the bill in 1902? A. No.

Q. The whole life of the industry you represented depended on the appropriation being made? A. Yes, sir.

Q. It was a matter of vital importance to these companies? A. Absolutely.

Q. When the appropriation ceased the companies ceased; is not that true? A. That's true.

Q. Having that in mind, this thing being an Appropriation Bill, which usually passes late in the session, and this being a special act and only going through the day before the adjournment in 1902, and carrying with it an appropriation of \$50,000, having that in mind, is your recollection refreshed in any way as to anything you did or as to who was pushing the bill? A. It is not.

Q. Well, after the bill was passed, did you see the Senator? A. I have no recollection whether I saw him after the bill was passed.

Q. Did you see any other member of either the Senate or Assembly in regard to it? A. I did not.

Q. Did you talk that session with any member of the Legislature other than Senator Raines? A. I did not.

Q. Why was it necessary for you to go down to Albany almost every week for the purpose of talking to Senator Raines? A. I don't recall that I made any such statement, Judge.

Q. How frequently did you go down during the session of 1902? A. Perhaps two or three times.

Q. Not more than two or three times during the entire session? A. I think not.

Q. And each time you went down is it your recollection now that you saw the Senator? A. I think I did.

Q. When the bill passed and you came back and reported it to the president of the company, what was said then in regard to compensation? A. My compensation?

Q. Yes, sir. A. Not anything.

Q. Did you say anything in regard to it? A. I did not.

Q. Did the president or any other officer of the company make any suggestion to you in regard to it? A. I can't recall.

Q. What were the amounts of your expenses during the session of 1902? A. I have no recollection.

Q. What would be your best recollection? A. A small amount.

Q. About how much? A. Perhaps \$300, or \$150.

Q. During the session of 1902 did you on behalf of the company or individually or any other way pay to any member of the Legislature or any employe thereof any money to influence his action upon this or any other measure? A. I did not.

Q. Or for any purpose whatsoever? A. No, sir, I did not.

Q. Was any campaign fund paid to Senator Raines or any other member of either house of the Legislature during 1902? A. There was not.

Q. Was any contribution made to the county committee or local committees of either party by you or any officer of the company to your knowledge, during the year 1902? A. Not to my knowledge.

Q. When did you next render any services to the company? A. 1903.

Q. Under what circumstances were those services rendered? A. Practically under the same circumstances as the prior years.

Q. With whom did you talk concerning the matter? A. Senator Raines.

Q. I mean with any officer of the company? A. Well, I don't know whether Mr. Scott was an officer at that time or not.

Q. Who succeeded Mr. Scott? A. Well, that I don't know. I can't say how long he was an officer of the company.

Q. Do you know who succeeded him when he ceased to be an officer? A. I do not.

Q. Well, you talked with the president of the company, whoever that was, did you? A. Some officer of the company—president or some other officer.

Q. Do you recall what was said? A. I can't recall that, no.

Q. Did you volunteer your services or did they seek your services? A. He asked me.

Q. What did he ask you to do? A. To go to Albany and look after the interests of the company.

Q. And did you consent to go? A. I did.

Q. Was anything said in regard to compensation? A. There was not.

Q. Was anything said in regard to expenses? A. There was, no doubt.

Q. What was said? A. That they would pay the expenses.

Q. Nothing would be paid beyond your expenses? A. My actual expenses.

Q. Well, have you any definite recollection of what you did in 1903? A. I have no definite recollection.

Q. Well, what recollection you have, appealing to that, what would you say you did in 1903? A. Practically what I did in prior years.

Q. Practically what you did in 1901 and 1902? A. Yes, sir.

Q. Did you talk with any other person beside Senator Raines? A. I did not.

Q. What did you say to the Senator in 1903 — now he had taken the matter up in 1901 and again in 1902, gone through both years, one carrying \$100,000 and the other carrying \$50,000. Now, what was said in regard to 1903? A. That it was necessary that the factories receive a continuation of the bounties in order to continue on in business.

Q. Did you take a bill down with you? A. I did not.

Q. Did you draft a bill? A. I did not.

Q. Did you have anyone else draft a bill? A. I did not.

Q. Did you receive, in 1903, representatives of any other sugar companies? A. I may possibly have met Mr. Rogers, but I have no recollection. I could not state.

Q. Can you now recall Mr. Rogers' first name? A. I cannot.

Q. Give me the progress of the bill in 1903. A. I have no recollection of that.

Q. Do you remember how much was appropriated in 1903? A. I do not.

Q. It appears here from the evidence that \$30,000 was appropriated in 1903. Do you recall whether that was included in the Appropriation Bill or was by special act? A. Why, I don't recall that.

Q. Do you recall when the Legislature adjourned in 1903? A. I do not; no.

Q. Well, it adjourned on the 23d of April, 1903, and the appropriation, as the evidence shows, having been made by chapter 577 of the Laws of 1903, being by special act, it became a law on May 13, 1903, which was after the adjournment of the Legislature, being therefore one of the thirty-day bills. Does that in any wise refresh your recollection as to the bill of 1903? A. It does not.

Q. Now, coming down to the session of 1904, can you tell me what occurred — were you employed by the company in 1904? A. I was requested to —

Q. Who was president of the company at that time? A. I can't give you that.

Q. Had Mr. Steigerwald then become president of the company? A. I think he was president at that time.

Q. Well, now, did you volunteer your services to Mr. Steigerwald, or did he request your services? A. He requested me to look after the matter.

Q. Now, give me, if you can, the substance of your conversation between you and Mr. Steigerwald in 1904, in regard to this matter? A. He asked me if I would go to Albany and look after their interests, and I told them I would.

Q. What was said between you and him in regard to compensation or expenses? A. I can't recall any conversation at that time in regard to — well, they said they would pay the expenses, but I can't recall any conversation in regard to compensation.

Q. Now, you had received no compensation in 1901, 1902 and 1903, you have testified, other than your expenses? A. Yes, sir.

Q. And those had only consisted of your traveling expenses and hotel bills? A. That is all.

Q. And did they come to you again in 1904 and ask you to go down to Albany? A. I think Mr. Steigerwald asked me if I would.

Q. What did you tell him? A. I told him I would.

Q. You didn't say anything in regard to compensation? A. I did not.

Q. How frequently did you go down there in 1904? A. I can't recall that.

Q. Whom did you see when you went down there in 1904? A. I called on the Senator.

Q. Did you see anyone else? A. I did not.

Q. You had no talk with any other member of the Legislature other than Senator Raines? A. No, sir.

Q. Didn't you talk with the Assemblyman from your county? A. I can't recall any conversation with him.

Q. In 1902, 1903 and 1904, did you discuss this matter with the Assemblyman from your county? A. I can't recall.

Q. Wouldn't it be the most natural thing in the world, this industry being located in his district, a bill pending in the Legislature appropriating money which was vital to the existence of the industry, that you would talk with him in regard to the matter? A. With whom?

Q. The Assemblyman from Wayne county? A. Not necessarily, because the Senator was also from our district.

Q. You had the Senator representing you in the Senate, but do you recall whether or not in any of these years, 1902, 1903 or 1904, you talked with the Assemblyman from your district? A. I can't recall that I did.

Q. Do you know who the Assemblyman from your district was in 1904? A. I think Mr. A. P. Smith was Assemblyman at that time.

Q. Do you know who introduced the bill in 1904? A. I do not.

Q. Was it introduced in both houses, or in one house? A. That I have no recollection of.

Q. Was the appropriation included in the General Supply Bill, or Appropriation Bill, or was there a special act? A. I have no recollection of that.

Q. It appears from the Session Laws of that year, by chapter 670 of the Laws of 1904, that there was a special act by which there was appropriated \$60,000. Now, can you give us — do you

recall anything with relation to the introduction of that bill? A. I cannot, no.

Q. Or who drafted it? A. No.

Q. Or who introduced it? A. No.

Q. How frequently were you down there that year? A. Not very often.

Q. Do you know what date the Legislature adjourned that year? A. I have no recollection of that.

Q. It adjourned on the 15th of April. This bill became a law on the 9th of May, making it also a thirty-day bill. From that, it would appear that the bill must have passed very late in the session, did it not? A. It would appear so.

Q. Now, in view of the fact that it carried an appropriation of \$60,000, and its being so vitally important to the industry you were representing, do you recall any other circumstance in connection with the passing of that bill? A. I do not.

Q. Did you, in the session of 1904, talk about or discuss this matter with any other member of the Legislature than Senator Raines? A. I did not.

Q. Do you remember paying him, or any other person connected with the Legislature, directly or indirectly, anything in relation to any other legislation or for any other purpose? A. I do not.

Q. Did you pay any money during the session of 1904, or prior to, or subsequent to the session, to anyone, to any member of the Legislature, or to any employe of either house? A. I did not.

Q. For any purpose whatsoever? A. I did not.

Q. Did you make any contribution on behalf of the company, or otherwise, to the campaign fund of any person, either a member of the Legislature or a candidate for the Legislature? A. I did not.

Q. During 1904? A. I did not.

Q. Did you make any contribution to the campaign fund of the county of Wayne, or other counties composing the Senatorial district of Senator Raines? A. Not in that capacity.

Q. By that you mean you made contributions individually, I presume? A. Personally I always contributed to the Republican fund.

Q. Now, let us see. In making personal contributions, how much were those personal contributions? A. Not very large.

Q. What would you say would be the largest? A. Twenty-five dollars.

Q. Were they made on behalf of the Beet Sugar Company or paid from the funds of the Beet Sugar Company? A. Not at all.

Q. Well now, in 1904, you also recall that in the Supply Bill there was appropriated \$9,913.57 of an unexpended balance of the previous year — do you recall that? A. I do not; no.

Q. Did you talk with Senator Raines in regard to an appropriation of this additional amount? A. I am under the impression that I did.

Q. Do you recall what you said? A. I do not.

Q. Did you see the Senator after the adjournment of the Legislature? A. I don't recall that I did.

Q. Well now, after 1904, the declared policy of the State to continue these appropriations expired, did it not? A. It did.

Q. Then it became a question with the sugar companies as to whether or not the State would continue its policy of paying bounties on sugar, did it not? A. Yes, sir.

Q. In other words, the year 1905 was a critical year for the sugar companies, was it not? A. I assume that all years were critical.

Q. That is true, but you at least had a basis prior to that time, that there had been a declared policy of the State to continue these appropriations for a period of years; but in 1905, weren't you met with the fact that that declared policy had expired? A. I assume that it had, from the fact that there had been three years of special legislation. I didn't think that that would continue forever.

Q. Well now, did you have any talk with Senator Raines in 1905 prior to the meeting of the Legislature? A. I did not.

Q. Did you render any service to this company in 1905 in connection with the appropriations to be made for that year? A. I did, yes.

Q. At whose suggestion did you render those services? A. At the suggestion of the president of the company.

Q. And who was the president of the company at that time? A. Mr. Steigerwald.

Q. And do you remember when you had your first talk with Mr. Steigerwald? A. I can't recall that, no.

Q. How long prior to the convening of the Legislature? A. Prior to that.

Q. Yes. A. I can't recall.

Q. You did have a talk with him prior to the convening of the Legislature, did you? A. I am not clear about that.

Q. Well, when you had your talk, whether prior or subsequent to the convening of the Legislature, what was said in regard to the services you were to render that year? A. In what way?

Q. In connection with legislation at Albany, what did he say and what did you say? A. We said we would have to have a bounty in some way, there would have to be some bounty appropriated in order to continue the factory.

Q. Did you and he at that time, or at any time prior to that time, discuss the critical situation in which the beet sugar interests found themselves in view of the declared policy of the State having expired? A. Prior to the convening of the Legislature?

Q. Yes. A. I can't recall.

Q. Did you afterwards? A. Possibly afterwards.

Q. Now, what was said in regard to your compensation that year? A. There was nothing said in regard to my compensation.

Q. What was said in regard to your expenses? A. That was of course understood that they would pay my expenses as had been done in the prior years.

Q. Well, did you go down to Albany at the convening of the Legislature for that year? 1905 I am referring to. A. January 1st,

Q. Well, I presume it convened early in January. A. It usually does on the first of January.

Q. Did you go down to Albany at the convening of the Legislature? A. I think I did.

Q. Whom did you see? A. Senator Raines.

Q. Did you see anyone else? A. I did not.

Q. Did you talk to any other member of the Legislature other than Senator Raines when you first went down there? A. I did not.

Q. Did you take a bill with you? A. I did not.

Q. Now, what did you discuss with the Senator, this is 1905, on your first visit? A. The importance of having a bounty bill.

Q. What did the Senator say? A. I can't recall the conversation.

Q. Give me the substance of it? A. He said he would assist us if he possibly could.

Q. Did he mention any special difficulties that probably would arise that year? A. He didn't think it was a very easy matter to get another bill before the house and have it passed.

Q. Why did he say he didn't think it would be an easy matter? A. Because the State had already made appropriations for eight years, and had gradually dropped from one cent a pound on sugar to one-half cent a pound on sugar.

Q. All the time the payments being made to the manufacturers? A. Yes, sir.

Q. What did he suggest, if anything? A. That if there was any possible chance of there being a bill passed, it would have to be proposed in some other form than the present form.

Q. What form did he suggest, if any? A. He suggested that a bounty bill be prepared paying a bounty direct to the farmer.

Q. That was in 1905 — did all this occur on your first visit? A. I can't say that.

Q. Or did you go down and talk to him and did he state the difficulties, and did you go back and have a talk with Mr. Steigerwald, the president of the company? A. I no doubt made several trips back and forth before it was finally decided what was to be done.

Q. When you came back each time, didn't you state to Mr. Steigerwald what Senator Raines said in regard to the difficulties to be encountered? A. I presume I did.

Q. And the policy to be pursued? A. No doubt.

Q. What did Mr. Steigerwald say about this change of policy, having the bounty payable to the grower of the beets rather than to the manufacturer of sugar? A. I can't recall.

Q. Did he favor it, or did he look upon it with disfavor? A. On the money being paid to the former?

Q. Yes. A. I can't recall just what he did say about that.

Q. Did Mr. Steigerwald go to Albany with you? A. He did not.

Q. Did he ever go to Albany? A. Not with me, no.

Q. Did he attend at Albany during the session of 1905? A. He did not.

Q. Did Senator Raines visit you and Mr. Steigerwald at Lyons during the session of 1905? A. He never did, no, sir.

Q. Well now, after you and Senator Raines had talked this over and you had reported back to Mr. Steigerwald, what was finally agreed upon? A. To go ahead on that proposition paying the bounty to the farmer.

Q. Who drafted the bill? A. The bill was drafted in the bill drafting room.

Q. At Albany? A. At Albany, yes, sir.

Q. Who outlined the bill? A. I think the Senator outlined the main items.

Q. This was entirely a different bill from any that had preceded it, was it not? A. It was, yes, sir.

Q. And under this bill, the farmer was to receive \$1 a ton for the beets grown, was he not? A. It was a part of the bill, yes, sir.

Q. Providing he sold them at the price of \$5 a ton? A. No, with that provision, provided the factory was paid —

Q. Providing the factory paid \$5 a ton? A. Yes, payable to him or his assigns — not less than \$5 a ton.

Q. And the money could be either paid to him or to anyone to whom he assigned it? A. Yes, sir.

Q. Who suggested that that provision be put in the bill? A. I think Senator Raines did.

Q. Did you talk that matter over with Mr. Steigerwald? A. No doubt I did.

Q. Let me refresh your recollection if I can. Isn't it a fact that when you came back and reported to Mr. Steigerwald the doubts which Senator Raines had in relation to the passage of another bill, making another appropriation, and the suggestion made by the Senator that the money should be paid to the farmer, that it was Mr. Steigerwald that made the suggestion that it should be made payable to him or to his assigns? A. I can't recall that now.

Q. Now think a moment about that. Wasn't that the suggestion of Mr. Steigerwald? A. I can't state that it was.

Q. He at least did not object to that, did he? A. I don't see how he could.

Q. Are you quite sure now, that you don't recall that he suggested that? A. I can't recall it.

Q. Well, the bill was drafted, and by whom was it introduced — do you recall? A. My best recollection is, the bill was introduced by the Assemblyman.

Q. The Assemblyman from Wayne county? A. From Wayne county, yes, sir.

Q. Who was the Assemblyman from Wayne county that year? A. Addison P. Smith.

Q. Was the bill also introduced in the Senate? A. It was.

Q. In which house was it first introduced? A. In the Assembly.

Q. By Mr. Smith? A. Yes, sir.

Q. That was rather early in the session, was it not? A. I think it was.

Q. What progress did the bill make after it was introduced? A. It was referred to a committee in the Assembly.

Q. What was done by the committee in regard to it — was anything done shortly after it was introduced? A. Not shortly, no.

Q. The bill slept in the committee for some time, did it not? A. I believe that term is used sometimes.

Q. Or remained in there? It was finally introduced in the Senate, you say? A. It was, later on.

Q. By whom? A. Senator Raines.

Q. Do you recall about what time the bill was introduced in the Senate? A. I can't recall the exact date, it was late in the session.

Q. I show you the Senate Journal of the 120th session, 1905, Volume 2, page 1462. It appears there, does it not, that the bill was introduced by Senator Raines on the 26th day of April, 1905? A. Yes, sir.

Q. Now, turning over to page 1650, in the same volume, the bill was referred, when introduced, to the Committee on Agriculture, was it not? A. I believe it was.

Q. Now, it appears from page 1650 of the volume, that on April 28th, two days later, it was reported favorably from the Committee on Agriculture, does it not? A. It does, yes, sir.

Q. Turning now to page 1700-1701 of the same volume, it appears that on May 1st the bill was reported from the Committee on Engrossed Bills as correctly printed and engrossed, does it not? A. Yes, sir.

Q. And referring to page 1806-1807 of the same volume, it appears that on Wednesday, May 3rd, the bill was passed in Senate, does it not? A. It does, yes, sir.

Q. Now, referring to the Assembly Journal of the 128th session, Volume 2, page 1133, it appears, does it not, that the identical bill had been introduced on March 17th in the Assembly, by Mr. A. P. Smith, the Assemblyman from Wayne county? A. It does, yes, sir.

Q. And, as it carried an appropriation, it was referred to the Committee on Ways and Means? A. Yes, sir.

Q. Now, isn't it a fact, Mr. Zimmerlin, that this bill was never reported by the Committee on Ways and Means, but remained in the committee until the Committee on Rules took charge ten days before the adjournment of the session? A. I presume that is the fact if it was not reported out.

Q. Now, I refer you to page 3256 of the Assembly Journal for the session of 1905, and it appears there, does it not, that Senator Raines' bill was received in the Assembly on May 3rd, 1905? A. Yes, sir.

Q. And referring to page 3330 of the same volume, it appears, does it not, that the Committee on Rules, on May 4th, reported Senator Raines' bill in the Assembly? A. Yes, sir.

Q. And referring now to page 3359, it appears, does it not, that on motion of Mr. Burnett, on May 4, 1905, the bill was read a second time, ordered to a third reading, and placed on its final passage? A. Yes, sir.

Q. And was passed, was it not, on that date? A. May 4th!

Q. Yes. A. Yes, in the Assembly.

Q. It was Senator Raines' bill. It had already passed the Senate? A. Yes, sir.

Q. And consequently it would go back to the Senate and from there to the Executive? A. Yes, sir.

Q. Do you recall the date on which the Legislature adjourned in 1905? A. I believe it was the 5th of May.

Q. That is, on the following day? A. The following day, yes, sir.

Q. This bill, as you recall, was introduced in March by Assemblyman Smith, never reported from the committee to which it was referred, the Committee on Ways and Means; that Senator Raines introduced his bill on the 26th of April, and that bill passed, went over to the Assembly after the Committee on Rules had taken charge, and that on the 4th of May, the day before the adjournment, this bill was reported from the Committee on Rules and placed on its final passage, as shown by the evidence, does it not? A. Yes, sir.

Q. You talked with Senator Raines about this bill, you said? A. I did, yes.

Q. What other members of the Legislature did you talk with in regard to it? A. During that session?

Q. Yes. A. I think I talked with Mr. Burnett about it.

Q. He represented the county of Ontario, did he not? A. He did at that time, yes, sir.

Q. Which is in the same senatorial district as Senator Raines' district, is it not? A. Yes, sir.

Q. Now, what did you say to Mr. Burnett about it? A. I asked him if he would not give us some assistance in the passage of the bill.

Q. What time during the session did you talk with him? A. After the bill had passed the Senate, possibly a day or two before that, but after it was introduced in the Senate; I will put it that way.

Q. He was a member of the Committee on Rules, was he not? A. I can't say whether he was or not.

Q. Didn't it appear from the Journal, which I showed you, that on motion of Mr. Burnett, it was reported in the Committee on Rules? A. It was reported from that committee.

Q. Did you talk with Mr. Burnett more than once in regard to it? A. I can't recall how many times I talked with him.

Q. You recall how desperate the situation was, do you not? A. I do, yes.

Q. That the Legislature was about to adjourn on the 5th; that the bill had not been reported in the Assembly, and that the closing days of the session were there — now, does that refresh your recollection as to whom you talked with in regard to it, outside of Senator Raines and Mr. Burnett? A. No, no one outside of them.

Q. No person outside of those two? A. No.

Q. Did you talk with any employe of the Legislature in regard to it during the session of 1905?

Judge BRUCE: It appears from the Manual that Mr. Burnett was not a member of the Committee on Rules in 1905.

Q. Did you talk with any employe of either House of the Legislature in regard to it? A. I can't recall whether I had any conversation now, or not, at that time.

Q. Just search your recollection for a moment and tell me whether or not during the session of 1905, when this bill was pending, whether or not you had any talks with any employe of the Assembly in regard to this bill? A. I may have had some talk.

Q. If you did, with whom did you talk? A. I may have talked with Mr. Betts.

Q. Who is Mr. Betts; what is his first name? A. Charles H. Betts.

Q. Where is he from? A. Lyons.

Q. Was he employed in the Assembly during the year 1905? A. I think he was in the revision department at that time.

Q. I refer you to the Manual of 1905, and ask you if that refreshes your recollection in regard to what position he held in the Assembly that year? A. Chief of the revision room.

Q. Now, if you talked with Mr. Betts in regard to it, what did you say? A. I asked him to give us some assistance if he could in that matter, in that connection.

Q. What assistance did he say he could render? A. Only in a clerical way, that is all.

Q. In what way in a clerical way? A. I cannot say exactly, because I am not familiar with the duties of his office.

Q. I know you could not say, but what did he say he could do? A. He would do what he could.

Q. Did he say what he thought he could do? A. No, I do not recall any such conversation as that.

Q. Is that all that you had to say to him or he had to say to you? A. That was all at that time, yes, sir.

Q. Did you see him more than once? A. I may have seen him two or three times perhaps within two or three days.

Q. Now, in the conversations which you had with Senator Raines while this bill was pending in the Senate, was there anything said by you to Senator Raines in regard to the vital importance of the passage of this bill to the industry which you were representing? A. There was.

Q. What did you say about that? A. I said that the business could not exist, that the factory would have to close down if it did not receive an appropriation.

Q. Did you say anything as to what the company was willing to do? A. I did not, no, sir.

Q. Did he make any inquiry of you as to what the company would be willing to do? A. He did not.

Q. Was anything said between you and him with reference to anything which the company would be willing to do? A. There was not.

Q. Did you say anything to Mr. Steigelwald in regard to what you thought the company ought to do? A. I may have had some conversation in regard to that.

Q. What did you say to him? A. I probably said that if the —

Q. Not what you probably said; give me your best recollection? A. My best recollection was that if the bill was passed the company ought to in some way show their appreciation.

Q. In what way did you suggest to him that they should show their appreciation? A. I think that was taken at my suggestion.

Q. What did he say in reference to your suggestion? A. He said that anything that was necessary to be done, why, he would take care of it.

Q. How long was this conversation between you and Mr. Steigelwald that you have just related before the passage of the bill? A. I cannot recall that.

Q. Was it shortly after the bill was introduced, or was it when

the session was nearing a close, and the bill had not moved? A. It was sometime after the bill was first introduced and the time of its final movement.

Q. Wasn't it true that it was near to the time when the session adjourned and it looked as though the bill would not pass? A. It was nearer that time than it was to the opening of the session.

Q. After you had this conversation with Mr. Steigelwald, did you repeat the conversation or the substance of it to Senator Raines? A. I cannot recall that, no.

Q. Let me ask you to search your recollection for a minute; isn't it a fact that you went down to Senator Raines and stated to him that if the bill became a law the company would show its appreciation? A. I might have said that the company ought to show its appreciation.

Q. Not what you might have said; of course you might have said a great many things; just pause for a moment, search your recollection, and tell me what you did state? A. I said in substance that the company ought to show its appreciation.

Q. What did he say? A. I do not recall that he made any reply to that.

Q. Where did this conversation take place? A. I cannot recall that.

Q. At the Capitol or at the Ten Eyck? A. At the Capitol.

Q. If at the Capitol, where in the Capitol? A. That I cannot state.

Q. Do you remember how long it was before the adjournment of the Legislature? A. I cannot recall the date.

Q. Was it a week or two weeks? A. It may have been two weeks or ten days.

Q. Was it before or after you had had your talk with Mr. Burnett? A. Before.

Q. Who was present, anyone? A. I think not at that time.

Q. What is your best recollection; was there or was there not anyone else present? A. There was not.

Q. You are positive about that? A. Quite sure.

Q. If the conversation took place in the Capitol, was it up in the corridors, or was it down in the Senator's office? A. Either in the corridor or in his office.

Q. What is your best recollection in regard to it? A. I cannot recall just where it was; I cannot specify the exact place.

Q. What did he say in reply to your statement that you thought that if the bill passed the company ought to show its appreciation? A. He said he would do all he could to further the passage of the bill.

Q. Did you say anything to him, or did he make any inquiry as to in what manner the company would show its appreciation? A. He did not.

Q. When you talked with Mr. Burnett, what did you say to him about that? A. Practically the same thing.

Q. And where did the conversation with Mr. Burnett take place? A. At the Capitol.

Q. Whereabouts in the Capitol? A. I cannot recall the exact location.

Q. How long after you had had your talk with Senator Raines? A. I cannot state the exact date; some time after the passage of the bill in the Senate.

Q. Well, the bill we find passed the Senate a very few days before the adjournment of the Legislature; in fact, only on May 3rd, Wednesday May 3rd, and the Legislature adjourned on Friday, the 5th? A. I said after the passage of the bill in the Senate.

Q. What did Mr. Burnett say? A. He said he would do what he could.

Q. Is that all you said to him? A. That is all I said, yes, sir.

Q. Did you state to him in what manner the company ought to show its appreciation? A. I did not, no, sir.

Q. Did you state to him in what amount it would show its appreciation? A. I did not.

Q. Did he say anything to you in reference to other people who would like to have the company show its appreciation? A. He did not.

Q. Did he suggest that the company should show its appreciation to other people? A. He did not.

Q. Did you have any further conversation with Senator Raines or Mr. Burnett than you have related in regard to the bill prior to its passage? A. Let me get that question again, Judge.

Q. Did you have any other conversation subsequent to the one you have just now related with Senator Raines and Mr. Burnett, prior to the passage of the bill? A. I cannot recall any.

Q. Were you there the day the bill passed? A. I was.

Q. After the bill passed in the Assembly, did you have any talk with Mr. Burnett immediately afterwards? A. I thanked him for the attention he had given it.

Q. Was there anything said by you or him in regard to appreciation? A. Not at that time, no, sir.

Q. Did you have any talk with Senator Raines immediately after the passage of the bill? A. Only that I thanked him.

Q. Now, when you returned to Lyons I presumed you reported as to what you had done to Mr. Steigewald, did you? A. I immediately wired him after the passage of the bill; wired somebody, I don't know who.

Q. Of the fact of the passage of the bill? A. Of the fact of the passage of the bill, yes, sir.

Q. When you got back home did you see Mr. Steigewald? A. I did.

Q. What did you say to him? A. I said that the bill had passed, and the company ought to in some way show their appreciation.

Q. What did he say? A. He said, "All right, anything that you think is right we will stand for."

Q. Go on, give me the rest of the conversation? A. I cannot recall anything more than that.

Q. What did you tell him you thought would be right? A. I told him I thought they ought to receive some fair amount.

Q. And what amount did you state? A. I told him I thought the Senator should receive at least \$3,000, if anything.

Q. What further? A. And that the Assemblyman ought to have at least \$1,500, if anything.

Q. Well, what did he say? A. He said, "All right."

Q. Well, then, what took place? A. In time they were presented with amounts of money.

Q. Tell me what took place next; was there anything further said in this conversation between you and Mr. Steigewald? A. No.

Q. When did you first next talk over the matter with Mr. Steigewald? A. I cannot now recall.

Q. About how long afterwards? A. I cannot tell just how long.

Q. A month or a week? A. Some time within a week or two.

Q. Some time within a week or two? A. Yes, sir.

Q. Where was that conversation had? A. At Lyons.

Q. What took place at that conversation; give it to me, or the substance of it? A. I do not know just what took place, just at that time.

Q. Do you know what you said to him, or he said to you, the next time you talked with him about the matter? A. I cannot recall just what conversation took place at that time.

Q. What was done? A. Finally, you mean?

Q. No; what was done at this next conversation? A. That I cannot recall.

Q. Well, when did you next talk to Mr. Steigewald about it? A. I saw Mr. Steigewald almost daily when I was home; I cannot fix any dates; I have no memorandum.

Q. Do you know when you next took up the question of appreciation, as you term it? A. I cannot tell you just when I did it.

Q. About how long after the adjournment of the Legislature? A. Immediately after the Legislature I talked with him about it; I think I already stated that.

Q. But you said you then had another conversation after that about it? A. A great many conversations we had, sometimes in a social way.

Q. Did you afterwards get the money from him? A. I did.

Q. That is what I am getting at. When did you next talk to him in regard to that? A. I cannot tell the exact date when that did occur.

Q. About how long after the adjournment of the Legislature? A. Perhaps just about at the time of the Legislature, within three or four days, perhaps.

Q. Within three or four days after the adjournment of the Legislature you talked with him about the money? A. I may have talked with him a day or two before.

Q. What did he say about it? A. What did he say?

Q. Yes. A. He said, "When you want the money, let me know."

Q. When did you want the money? A. I cannot recall when I did get the money.

Q. That is what I wanted to get at. How long after the adjournment of the Legislature did the transaction between you and him take place when you got the money? A. I may have got the money before the Legislature adjourned.

Q. That is of importance. When did you get it? A. I cannot recall the exact time.

Q. How much did you get? A. I got \$3,000 at one time in one sum.

Q. And how much did you get after that? A. I think about \$3,000 after that.

Q. There is \$6,000; how was it paid to you? A. In currency.

Q. Did he hand you the currency, or give you a draft, and you went and got the currency? A. I think the currency was handed to me.

Q. By Mr. Steigewald? A. Either Mr. Steigewald or Mr. Multer.

Q. Where? A. I cannot recall just where that was.

Q. At the offices of the company? A. It may have been at the offices of the company.

Q. At the office of the company in the village of Lyons or in the offices of the company at the factory? A. No, not at the factory.

Q. It would be at the office of the company in the village of Lyons? A. Either at the office of the company or at my store, or wherever I happened to meet the gentleman.

Q. Were they both present when the money was paid to you? A. They were not.

Q. Which one was present? A. I cannot say which one paid me; I have no recollection just now of which one it was.

Q. When you stated to Mr. Steigewald how much you wanted, to wit, \$6,000, how long after that did you actually get the money? A. Either before the adjournment of the Legislature, and the 23rd or 24th of June.

Q. Did you have the money in your pocket down at Albany when the Legislature adjourned? A. I do not think I did.

Q. When you got the money did you deposit it to your ac-

count, or did you carry the currency with you? A. I carried the currency.

Q. Then if you did not have it with you down at Albany at the time the Legislature adjourned, the probabilities are that you had not received it at that time, are they not? A. That may not be so; I may have had it before the Legislature adjourned; I rather have a recollection that I did have the money before the Legislature adjourned.

Q. Do you remember where you put it until the time you made the payment? A. I carried it with me.

Q. All the time? A. Yes, sir.

Q. On your person? A. On my person.

Q. Is it your recollection now, Mr. Zimmerlin, that you had it with you down at Albany the day the bill passed? A. I cannot say whether I did or not.

Q. Did you have it with you at the time you talked with Senator Raines and Mr. Burnett, and stated to them that the company ought to show its appreciation? A. I did not get the question.

Q. Did you have it with you at the time you had this conversation with Senator Raines and Mr. Burnett, in which you told them you thought the company ought to show its appreciation? A. I did not.

Q. Isn't it true that you took the money down with you for the purpose of seeing that the bill went through? A. I may have had it with me.

Q. To use if necessary? A. Yes, sir.

Q. Isn't that the fact? A. I rather think I had part of the money; I did not have the full amount.

Q. How much do you think you had with you? A. I think I had \$3,000.

Q. Isn't it a fact that you had talked with Mr. Steigelwald telling him the desperate situation, that the Legislature was about to adjourn, and something ought to be done, and asking him for \$3,000, and took the \$3,000 down with you before the Legislature adjourned, for the purpose of seeing that the bill got through? A. I think that was the circumstance.

Q. Now, when you were down there talking with Senator Raines and Mr. Burnett, having the \$3,000 in your pocket, did

you state anything to either one of them of the amount that the company was willing to pay to see the bill got through? A. I did not.

Q. Positive about that? A. Yes, sir.

Q. Did you state to anyone else the amount that the company was willing to pay if the bill got through? A. I did not.

Q. Why was that, did you feel it was not necessary to use the money to put the bill through? A. I did not feel it necessary?

Q. Yes. A. I felt if the gentlemen devoted their time and attention to it —

Q. No, you stated to me a few moments ago that you talked with Mr. Steigelwald about the desperate nature of the situation, and it was necessary that something heroic be done, and that he gave you the \$3,000, and you went down to Albany with the money in your pocket before the Legislature adjourned to use it if necessary to get the bill through; when you got down there and had your talk with Senator Raines and Mr. Burnett, didn't you feel it necessary then to use the money to get the bill through? A. I want to qualify your statement by saying that I don't know whether Mr. Steigelwald gave me that money; you make the statement that he gave me the money.

Q. Whoever passed it to you physically I don't know, but of course Mr. Steigelwald was the one who had to authorize the giving of the money? A. He had the direction.

Q. That is what I mean by that, that is correct, isn't it? A. That is correct.

Q. Didn't you feel down there with the money on your person that it was necessary to use the money to put the bill through; here was the closing day coming Friday, they were going to adjourn, the bill had not passed the Senate on Wednesday; now, didn't you feel it necessary to use the money to get the bill through and get it over into the Assembly and get it passed there? A. I made the statement that I thought if the gentlemen were successful, that is, if the bill was passed, that the gentlemen ought to receive something as appreciation of their services.

Q. Yes, but why did you take the currency down with you if you did not take it down to use it? A. Why, in order to immediately show that we did appreciate the services.

Q. Did you pay them immediately right off after the bill passed? A. I may have paid them before.

Q. You paid them when? A. I say I don't know when I did pay them.

Q. You had \$3,000. When did you get the other \$3,000? You said you had \$6,000 altogether? A. I cannot state exactly when I did get the balance, when the other was paid.

Q. How long after you got the first \$3,000 did you get the second \$3,000? A. Between the closing time of the Legislature and sometime in June.

Q. Now, did you pay the money to Senator Raines? A. I did, yes, sir.

Q. Where? A. In the committee room.

Q. What committee room? A. In his committee room

Q. On what floor of the Capitol? A. I think it is the second floor.

Q. Who was present? A. Nobody but the Senator himself.

Q. When was the payment made? A. I cannot say; it was within two or three days, that is, between the 1st of May and possibly the 5th or 6th, something along there; I cannot state just exactly.

Q. Before or after the adjournment of the Legislature? A. That I cannot state.

Q. Think a moment; was it before or after the Legislature adjourned? A. I say I cannot recall the exact date.

Q. Before or after the passage of the bill? A. It was after the passage of the bill.

Q. Now, the bill passed upon the 5th? A. No, the 3rd, I think.

Q. On Wednesday the 3rd, the bill passed the Senate, and it passed the Assembly the next day, the 4th; now, would that refresh your recollection? A. I say it was after the passage of the bill in the Senate.

Q. And before the adjournment of the Legislature? A. I cannot say that; it was within two or three days.

Q. You had the money down there with you in order to make good if they made good? A. That is all right.

Q. Now, did you, when the bill had passed, pay the money to Senator Raines before the adjournment of the Legislature? A.

My impression is I paid it within two or three days after the passage of the bill.

Q. Then, if the bill passed on the 3rd, that would make it on the 4th or 5th? A. Within two or three days. It is not material, is it, just exactly?

Q. The bill became a law on June 3rd, 1905, with the approval of the Governor; it was before the bill became a law, was it? A. Yes.

Q. Now, did you go down to Albany for that special purpose or were you in Albany? A. I was in Albany at that time.

Q. How did you pay him, in what manner? A. Currency.

Q. Large bills or small bills? A. I cannot give you the denominations of the bills.

Q. Were they large or small? A. They were not ones or twos; they were larger than that.

Q. Did it make a large package? A. Not very large.

Q. Were they open, or were they in an envelope? A. I cannot recall that.

Q. Now, just tell us all that transpired, the time of day, your going to the room, who was present, and just the whole transaction, will you? A. I cannot give you the time of day, nor what day, neither can I give you the exact date of it; I haven't any recollection exactly as to what moment nor what time of day it occurred; there was nobody present at the time I handed him the money.

Q. Tell me just what took place? A. I stepped into the room, found he was there alone, and I handed him the money. I said: "Senator, here is a small contribution from the company in appreciation of the services that you have rendered."

Q. What did he say? A. He thanked me.

Q. Did he count the money? A. Not in my presence; I immediately retired from the room.

Q. Did you tell him the amount? A. I did not.

Q. Did he take the money out of the package and look at it? A. I don't know that it was in a package.

Q. If it was, do you recall whether he took it out or not? A. No; I did not wait there.

Q. What did he do with the money? A. I imagine he probably placed it in his pocket.

Q. Did you notice what he did? A. I did not.

Q. Did you say anything further? A. I did not.

Q. Did he say anything further? A. He did not.

Q. Where did you then go? A. I went out into the building.

Q. And then where did you go? A. I cannot recall just where I went at that time.

Q. Did you see the Senator after that? A. I presume I saw him within the time I was there; I have no doubt I saw him.

Q. Did he say anything further to you about it? A. He did not.

Q. Did you pay Mr. Burnett? A. I did.

Q. When did you pay him? A. I cannot recall the exact dates.

Q. Before or after this transaction with Senator Raines? A. It was after that.

Q. How long afterwards? A. I cannot recall the exact time.

Q. Where did it take place, the payment? A. At Albany.

Q. Did you go back to Lyons and come back again, or was it during your stay in Albany? A. It may have been during my stay there; I think it was.

Q. You think it was? A. Yes, sir.

Q. Are you quite positive about that? A. I am quite sure it was.

Q. Where was Mr. Burnett when you paid him? A. He was in the Cities parlor.

Q. You mean the Cities parlor or the Assembly parlor? A. The Assembly parlor, I should say.

Q. What floor is that on? A. The third floor.

Q. Where is it located with reference to the Assembly chamber? A. I should say it was east.

Q. On the east front of the Capitol? A. The northeast corner.

Q. Northeast corner? A. Yes, sir.

Q. A large room or a small room? A. Quite a large room.

Q. How large as compared with this room? A. Smaller than this.

Q. Half as large? A. I should say about half as large.

Q. What time of day was it? A. I could not state.

Q. Morning or afternoon? A. I don't remember the time of day.

Q. Day time or evening? A. During the day time.

Q. Before or after the adjournment of the Legislature? A. I cannot recall that; I cannot recall the exact date.

Q. Now, Mr. Zimmerlin, you have been there at the close of the Legislature, haven't you? A. Yes, sir.

Q. You know the confusion and the stir that takes place during the last day or two of the Legislature, the number of people that are around there? A. Yes, sir.

Q. Now, with that to refresh your recollection, was it before or after the Legislature had adjourned? A. I cannot state exactly; I have no way of refreshing my recollection.

Q. If after the Legislature adjourned, how long after? A. I could not state.

Q. How long did you remain in Albany that year after the Legislature adjourned? A. Why, that week I presume I went home; I went home after the adjournment of the Legislature.

Q. To pass by that for a moment; now, tell me all the circumstances in regard to this payment to Mr. Burnett; what he said; what you said; what you did, and what he did? A. Practically the same language that was used with the Senator.

Q. Just tell me? A. I handed him the money and told him that was a slight donation from the company for the services that he had rendered.

Q. How much did you hand him? A. I handed him \$1,500.

Q. In currency? A. In currency, yes.

Q. In an envelope or open? A. I cannot recall whether that was open or not.

Q. And he was in the Assembly parlor at the time? A. He was in the Assembly parlor when I saw him.

Q. Was he in there when you first went in? A. I cannot recall that.

Q. Or had you sent for him? A. No, I did not send for him.

Q. Did you go in there with him? A. No, I found him there.

Q. You found him there? A. Yes, sir.

Q. Alone? A. When I paid him.

Q. Do you recall whether he was alone when you first went in? A. That I cannot recall.

Q. Did you close the door when you went in? A. I did not.

Q. Was the door closed when you paid him? A. I cannot recall that.

Q. Did anyone come in after you came in and before you paid him? A. Nobody was present when I paid him.

Q. What did Mr. Burnett say? A. He thanked me for it.

Q. What did he do with the money, did you notice? A. I did not.

Q. Let me see if you are quite sure as to the amounts again; there was \$3,000 that you gave Senator Raines? A. Yes, sir.

Q. And \$1,500 that you gave Mr. Burnett? A. I did.

Q. Now, when you went down there, how much money did you have with you? A. I did not have any when I went down, I don't think, when I first went down.

Q. Did you get the money after you went down there? A. I think the money was — I may have gone back to Lyons possibly and got the money; I cannot recall just exactly.

Q. You got it all at once from Mr. Steigelwald or the book-keeper, did you not? A. To the best of my recollection.

Q. You stated to me that before the Legislature adjourned you went down with \$3,000; was that correct? A. I either took it with me or I went back and got it; I cannot recall just exactly the circumstances now.

Q. Where was the other \$3,000? A. I may have gone back; I may have got that later.

Q. Now, what was the fact; let me ask you to pause a moment, search your recollection now; just give us the fact; we are deeply concerned in the exact facts; will you just give me the facts as to whether or not you went down with the whole \$6,000, or whether you went down with the \$3,000? A. My impression is that I went down with \$3,000 first.

Q. Now did you pay that three thousand out before you went back and got the other three thousand? A. That is my impression.

Q. And the first 3,000, to whom did you give that? A. The Senator.

Q. Senator Raines. Did you then go back to Lyons before you paid Mr. Burnett? A. I am not positive about that.

Q. Well, what is your best recollection? A. It may have been brought to me. The money may have been brought to me possibly by Mr. Multer, possibly. I am not quite clear.

Q. Now your first recollection was that Mr. Multer or Mr. Steigelwald gave it to you in Lyons there at the office of the company or at your office. Now you say it may have been brought to you in Albany. Now which is correct? A. Both may be correct. I possibly started with 3000, and the additional 3000 I would rather think was handed to me in Albany by Mr. Multer. That is my recollection.

Q. Did you send word in the meantime from Lyons that you wanted \$3,000 more? A. I don't know that I sent word there, but some way I must have communicated to them.

Q. Now are you sure that the amount you gave Mr. Burnett was \$1,500? A. Yes, sir.

Q. Did not you give him more than that? A. I gave him 1500 for himself.

Q. 1500 for himself. Now how much more did you give him? A. My impression is that I gave him 1500 besides that.

Q. And for whom did you give him the extra \$1,500? A. No one in particular.

Q. Was it in two packages? A. It was I think in one package.

Q. And what did you say to him in regard to the amount? A. I told him there was 1500 of that amount; 1500 was provided for him, and the other was for him to use as he saw fit.

Q. And the other 1500 was to be used as he saw fit? A. Yes, sir.

Q. That made 3,000 in all that you gave him? A. In all, the entire sum.

Q. Now, "to use as he saw fit," what did you mean by that? A. I meant exactly what I said.

Q. Well, did you mean to use as he saw fit for his personal use or any other use that he — A. Any use that he wished to use it for.

Q. Who suggested that the amount be 3,000? A. Nobody.

Q. Was that entirely of your own volition? A. It was, yes, sir.

Q. Was nothing said at all to you by Mr. Burnett or anyone else, that you should give it in two amounts? A. No, sir.

Q. The bill had already passed, had it? A. It had, yes, sir.

Q. What was he going to do with the other 1500? A. I am sure I don't know. I didn't ask him what disposition he was going to make of it.

Q. What did you have in mind that he would do with it? A. I had nothing special.

Q. You must have had something in mind, that he should have another 1500 to do with as he saw fit, or you would have given him the whole 3,000 to do with it as he saw fit? A. I simply wanted to make the statement that he was to receive 1500 himself.

Q. And some other person was to receive the other 1500, some other person or persons? A. Possibly that is so.

Q. Well, not possibly — isn't it so as a matter of fact? A. Yes, sir, that was my idea in giving it to him.

Q. That other persons were to receive 1500. What other persons did you have in mind? A. I had nobody in mind.

Q. Had you talked with any other member of the Assembly? A. I had not.

Q. Did you talk with any other member of the Senate? A. I have not.

Q. Had you in mind any member of the Assembly or Senate? A. I had no one in particular in mind.

Q. And had you promises directly or indirectly to pay any amount to anyone else in appreciation or otherwise? A. I did not.

Q. Did he suggest to you that there were other persons that ought to be paid either at that time or in any other conversation? A. What's that?

Q. Did Mr. Burnett suggest to you any other person, that there were other persons that ought to be paid? A. He did not.

Q. Did he or anyone else say to you that the bill was in the Committee on Rules, the session was at its close, and that something would have to be done for the committee? A. There was not; no, sir.

Q. Well, was that what you had in mind? A. I had nothing special in mind.

Q. Was that what you had in mind? A. I say I had nothing in mind, fixed.

Q. Was that what you had in mind? A. I say I had nothing particular in mind.

Q. Did you have in mind the fact that the bill had been reported from the Committee on Rules and Mr. Burnett was to re-

ceive \$1500, and the Committee on Rules or some members of it were to receive the other 1500, or any part of it? A. I handed the money, as I said, with that amount.

Q. What was in your mind — not what was in Mr. Burnett's, that you could not tell unless he expressed it, but I want to know what your purpose and object was in giving this additional 1500. A. Nothing, only to ask him to use that as he saw fit. Now he may not have used it. I don't know.

Q. Would not the word distribute be better than use, because there was no further use for it, the bill had passed? A. Distribute or use himself.

Q. Well now, how did Mr. Burnett use the money? A. I could not say.

Q. Did not he tell you? A. He did not.

Q. Did not he suggest what he was going to do with the other 1500? A. He did not.

Q. Did he say whether he was going to keep that himself or you did as you had suggested? A. He did not.

Q. Did you subsequent to that have any conversation with him in regard to the matter? A. I never did, no, sir.

Q. Well now, just search your memory for a minute, and see if you can tell me what time of day it was when your conversation took place with him? A. I cannot recall that.

Q. Was it early in the forenoon or was it late in the afternoon? A. I cannot recall that.

Q. Or mid-day? A. I cannot tell you.

Q. Were there many around, or were the corridors of the Capitol apparently vacant? A. I have no recollection exactly of what the conditions were.

Q. Did you have to do it hastily for fear somebody would enter, or did you seem to have plenty of time? A. I waited my opportunity when he was alone, and handed it to him.

Q. Had you been waiting around for some time to see him? A. I cannot say how long it was.

Q. Did you walk in the Assembly parlor and walk up — was he sitting at his table? A. At his desk.

Q. Did you walk in the Assembly parlor and hand it to him, or had you waited around for some time? A. When I went in the room there was no one in the room.

Q. Well, can't you give me some idea as to the time of the day it occurred? A. I cannot, no, sir.

Q. Well, now, what other members of the Legislature, if any, did you pay or give any money to in appreciation of the passage of the bill, or for any other purpose? A. Mr. C. H. Betts; I paid him some.

Q. How much did you pay Mr. Betts? A. Three hundred dollars.

Q. He was the chief clerk in the revision room, was he not? A. He was, yes.

Q. When did you pay him \$800? A. After the adjournment of the Legislature.

Q. Where did you pay it? A. At Lyons.

Q. Now, give me the circumstances of that payment. A. I called at his office and handed him the money, and told him the company appreciated the services very much, and that was a slight token.

Q. When you had first talked with Mr. Betts about his aiding in the bill, had you told him that if the bill passed the company would show its appreciation? A. I have no recollection of any such conversation.

Q. Well, did he ever ask you to make payment to him? A. He did not.

Q. How was this paid, in currency or otherwise? A. In currency.

Q. From what source did you receive that \$300? A. From the company. I don't remember who handed it to me.

Q. And was it in an envelope or was it loose or open? A. I handed it to him in a roll.

Q. Was there anyone present or was he alone? A. He was alone.

Q. How long was it after the Legislature had adjourned? A. I cannot recall the date.

Q. Was it afterwards or before the adjournment of the Legislature? A. After the Legislature adjourned.

Q. How long, would you think? A. Oh, within three or four weeks, perhaps.

Q. What did he say? A. He thanked me.

Q. Did he say anything else? A. Nothing more; no, sir.

Q. What did he do with the money? A. I cannot recall what he did with that.

Q. What had he done to help secure the passage of the bill? A. Why, nothing in particular.

Q. What did he say he had done? A. He didn't say exactly what he had done.

Q. You say he didn't say exactly. What did he suggest that he had done? A. He didn't suggest.

Q. Well, what did you feel that he had done? A. I felt that he had given the bill some attention, and saw that the bill was brought back and forth—I thought, at least, that he had, in getting the bills from one house to the other, in the closing days of the Legislature.

Q. Well, that was his business, wasn't it; that was what the State was paying him for? A. I presume it was.

Q. Then why did you think the company should do something additional in appreciation? A. I was a little bit new in the passage of bills. I knew the bill would have to get back from one house to another, to be passed, and I thought he might be able to aid some.

Q. Well, you were not so new about passage of bills, for you had been down in 1901, 1902, 1903 and 1904. These bills had been going through in the closing days—a hundred thousand, 60,000 and 50,000—it was not altogether new to you, this passage of bills. A. Practically so. I had no real experience in the passage of bills or introducing them prior to that time.

Q. Did Mr. Betts draw this bill? A. He did not.

Q. Did he assist in drawing it? A. He did not.

Q. Did he do anything in relation to the bill other than what you have stated? A. That is all.

Q. Did you pay anyone else besides Senator Raines, Mr. Burnett, and the employe of the Assembly, Mr. Betts, in the year 1905? A. I did not.

Q. Did you directly or indirectly pay any member of the Legislature, either before or after the session, any money for any service rendered in 1905? A. I did not.

Q. Are these payments absolutely and entirely the only payments you made in 1905? A. They are.

Q. Amounting to \$6,300? A. Something like that.

Q. Well, now, what were your expenses in 1905; do you recall?

A. I have no means of knowing what the exact expenses were.

Q. Well, what would you say, your best estimate? A. 1905?

Q. Yes. A. Maybe a thousand dollars.

Q. Your expenses were a thousand dollars? A. May have been, yes.

Q. Now, the bill was not introduced until March, by Mr. Smith, and not by Senator Raines until April 26. You could not have been down many times. Do you think your expenses were a thousand dollars that year? A. That would not be very much in Albany, would it?

Q. I don't know. You told me in other years that it was a small amount, probably \$100 or \$150. A. That was under different circumstances.

Q. What other circumstances? A. No occasion to chase up the bill or anything else.

Q. What was said by the officers about your compensation in 1905? A. Nothing said at that time.

Q. Did you receive any compensation in 1905, or did this thousand dollars include your compensation? A. I cannot say exactly about that. There may have been some part of that during my entire — I don't want to press anything. I will wait.

Q. Go on. During your entire what? Continue. Continue, will you, please? A. During the term of 1905 to 1908, inclusive, I may have — I presume I received between two and three thousand dollars — somewhere in that amount, between two and four thousand dollars.

Q. Now, the books of the company show that on March 9 you got your first payment for expenses, \$100. That was shortly prior to the introduction of the bill by Mr. Smith. That on April 8th you also drew \$39 for expenses; the 10th, \$75; the 25th, \$115, and the 1st of May, \$105. Now, did not that include your expenses that year? A. Include?

Q. Your expenses? A. A part of my expenses.

Q. Well, that continued from March 9 to May 1st, and are the only entries on the books of the company. Now did not it include your expenses — I mean your traveling expenses and hotel bills? A. Not all of them, no, sir.

Q. What other amounts did you receive? A. I cannot recall the exact amounts I received, but I received other money.

Q. Now the books of the company show that during the year 1905 you received \$7,843.90. Now you tell me you paid out \$6,300, and that your expenses were about how much? A. I cannot recall the amount of the expenses.

Q. Well, a thousand dollars would be \$7,300, if they were a thousand dollars. And can you tell me what was done with the remaining about \$500? A. A great many expenses outside of the expenses that are mentioned there.

Q. Now, Mr. Zimmerlin, the hour of adjournment has arrived. Before I discontinue until to-morrow, tell me frankly, did you during that year pay out any sums of money to any person or persons other than those you have named here? A. I did not. I might add there, that there were other expenses. That before that bill was drawn I went before the State Grange at Olean; did many services of that kind. That was an expense.

Q. Included in the \$1,000? A. I don't know whether that was included in that 7,140 or not. Mr. Steigelwald oftentimes advanced moneys to a person and was then reimbursed from the company.

Q. I will take that up at the next session. Let me say, as you approach the matter of the State Grange, that was the only meeting of the State Grange in the winter of 1905 which you attended, at Olean. A. Yes, sir.

Q. For what purpose? A. To see if we could not get the State Grange to aid us in securing this bounty.

Q. Who suggested that you attend? A. I think the Senator suggested it.

Q. Senator Raines. That is, if you could not invoke the approval of the State Grange to the bill making an additional appropriation for bounty, and the bounty payable to the farmer, was that it? A. Continuing the bounty.

Q. Well now, as a matter of fact, isn't it true that in every instance practically, the farmer assigned his bounty to the manufacturer? A. That is true, as far as his interest appears.

Chairman MERRITT: The Committee will stand adjourned until 11 o'clock to-morrow. All witnesses will then appear.

Adjourned to Friday, October 7, 1910, at 11 A. M.

TWELFTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,

NEW YORK, *October 7th*, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, ESQ., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

H. F. ZIMMERLIN, *recalled*:

Examination by Judge BRUCE, continued:

Q. Now, Mr. Zimmerlin, coming down to the next year, the year 1906? A. Before we start in on that, may I be able to make a statement, Mr. Bruce?

Q. Yes, sir. A. I wish to state that in my testimony yesterday I testified that I gave two sums of money to Jean Burnett. I find upon refreshing my recollection that I gave him but one. I came here with the avowed purpose of not trying to conceal anything and to make an honest statement as far as I can from my own best recollection and I wish to make that statement.

Q. What sum did you give him? A. \$1,500.

Q. Was this for himself or to be used as he saw fit? A. That was to be used as he saw fit.

Q. How much did you give him for himself? A. I gave him just the one sum of money, \$1,500.

Q. What did you say when you gave it to him? A. I told him. "Here is a slight present from the factory for the services that have been rendered."

Q. Now again, did you give him the \$1,500 for himself or to use as he saw fit? A. I gave him the sum of money for himself.

Q. Now, what has refreshed your recollection. First, you testified yesterday, did you not, that you not only gave him \$1,500, and said to him that it was for himself, but that you at the same time handed to him an additional \$1,500, and stated that it was for him to use as he saw fit. A. That was the testimony I gave yesterday, yes, sir.

Q. And didn't you also tell me that fact night before last at the offices of the Committee? A. I did.

Q. Didn't you also make the same statement to Mr. Hurrell up in Lyons some time last week, say last Saturday? A. I did, yes, sir.

Q. Now, what has refreshed your recollection since yesterday that the statement you made to Mr. Hurrell in Lyons, the statement which you made to me in the offices of the Committee, and the statement to which you swore under oath, giving specifically the words and the amount, what has refreshed your recollection that that was not true? A. I had a talk with Mr. Steigelwald before I left this room yesterday, and he says that I had but the one sum. I have no notes and no memoranda to really fix the thing in my mind, and I immediately came to your office and gave you the circumstances.

Q. Was Mr. Steigelwald present when you gave Mr. Burnett this money? A. He was not.

Q. Then how does Mr. Steigelwald know what you paid him? A. I don't think he does know.

Q. Then why do you take Mr. Steigelwald's word against your recollection, which you had stated to Mr. Hurrell, stated to me, and sworn to under oath? A. The fact that he knows about the amounts of moneys that we had at that time.

Q. That is true, but Mr. Steigelwald was not present when you paid the money, and how does he know how much you paid? A. I don't think he does.

Q. Who is testifying here, you or Mr. Steigelwald? A. I am testifying at this moment.

Q. You are under oath, are you not, and you were under oath yesterday when you testified? A. Yes, sir.

Q. Was Mr. Steigelwald under oath when he talked to you yesterday afternoon in this room? A. No, sir, neither was I under oath when I made the statement to Mr. Hurrell at Lyons.

Q. But you are under oath when you testified here yesterday? A. Yes, sir.

Q. Why do you wish now to change your positive recollection, which you repeated to Mr. Hurrell, to me, and also testified to under oath, simply upon the declaration of a man who is not under oath, that you didn't pay that money, that man not being present when the transaction occurred? A. I am simply trying to tell the truth.

Q. You were trying to tell the truth yesterday, weren't you? A. That is my best recollection.

Q. Who is right, you or Mr. Steigelwald? A. I think I am now.

Q. You thought so yesterday, didn't you? A. I did, but my memory has been refreshed.

Q. In what way? A. Mr. Steigelwald refreshed my memory.

Q. In what way? A. That I didn't receive \$6,000 at that time.

Q. In what way did he show you that you didn't receive \$6,000 at that time? A. I accepted his word for it.

Q. Then on the word of a man who is not under oath you are prepared to change the evidence which you gave under oath? A. I wish to change my evidence.

Q. Is it the fact then that on the word of a man who is not under oath, and who was not present when the transaction occurred, you are now prepared under oath to change the evidence you gave? A. I don't know the legal status of this, Judge, I simply want to make that statement. I want to change my statement.

Q. And you are going to change your statement made under

oath, simply on the word of Mr. Steigelwald — isn't that true? A. Perhaps that is so.

Q. Isn't it so? A. Yes.

Q. And Mr. Steigelwald was not present when the transaction occurred? A. No.

Q. What is Mr. Steigelwald's peculiar interest in this matter of your payments? A. No special interest that I know of.

Q. Didn't he furnish you with any data or written evidence to convince you of your error, or did you simply take his word for it? A. I took his word for it, yes, sir.

Q. That is all on that matter. Now coming to down to the year 1906 — well, did you pay Burnett \$1,500? A. I did.

Q. Are you positive of that? A. I am.

Q. If Mr. Steigelwald was to tell you after this meeting that you didn't, would you change your testimony? A. Mr. Steigelwald may not know I paid Mr. Burnett that \$1,500, but I did pay it.

Q. That is right, Mr. Steigelwald doesn't know what you paid him, whether you paid him \$1,500 or \$15,000. He wasn't there — isn't that true? A. That is true.

Q. Mr. Steigelwald will have his opportunity to give us the facts when he is under oath, the same as you are. Now, coming down to the year 1906, were you employed for that year by Mr. Steigelwald to look after the matters of legislation at Albany? A. I was, yes, sir.

Q. When did this employment take place? A. I have no recollection of the exact date. It was during the legislative season of 1906.

Q. Was it early or late in the session? A. Well, I can't give you the dates of it.

Q. What did Mr. Steigelwald say to you and what did you say to him? A. He simply asked me to do as I had done before in previous years.

Q. Had he paid you any compensation for what you had done in 1905? A. I received some compensation.

Q. How much? A. I can't state exactly what I did receive that year.

Q. About how much? A. It may have been a thousand dollars, perhaps, during the season.

Q. Did that include your expenses? A. It did not, no, sir.

Q. Tell me how it was that you received a thousand dollars for your compensation in 1905, when you were not paid any compensation whatever in 1901, 1902, 1903, or 1904, although the appropriation in the previous years ran from \$25,000 to \$100,000, and in 1905, the appropriation was only a little over \$18,000? A. I don't know that the appropriation has anything to do with the fact.

Q. Well, why were you paid compensation in 1905 when you were not paid any compensation for your services in 1901, 1902, 1903, or 1904? A. I don't think Mr. Steigelwald calculated that I should do all this work for nothing.

Q. Well he didn't pay you anything in 1904, did he? A. I think, perhaps, I did get some compensation in 1904.

Q. Do you want to change your evidence on that? A. I am not quite sure whether I did or not.

Q. You testified yesterday, did you not, that you received no compensation in those years except your expenses? A. I haven't any real data on it, I am simply giving you my best recollection.

Q. What is your best recollection now to-day about it? Did you or did you not receive any compensation prior to 1905? A. I will say I didn't receive any compensation in 1904.

Q. But you think you did receive compensation in 1905? A. Yes, sir.

Q. Now, when was that compensation paid? A. No particular time.

Q. It must have been a particular time, it must have been at a time, at what time was it? A. I can't give it now.

Q. Was it before or after the adjournment of the Legislature? A. I say it was during the season of 1905.

Q. Before or after the adjournment of the Legislature. The Legislature adjourned on May 5th? A. It was during that season.

Q. Before or after the adjournment of the Legislature? A. I can't give you the dates.

Q. Your best judgment, was it before or after? A. It was in the season between January and the early part of the Fall.

Q. Before or after you had paid the moneys that you have stated to Senator Raines and Mr. Burnett? A. I can't say as to that.

Q. Did you receive your compensation before the bill had passed, or after the bill was passed? A. I can't say, I have no recollection when I was paid.

Q. Now, just let us think for a moment; pause, compose yourself a little; this was only five years ago. Did Steigelwald pay you before the bill got through or did he pay you after the bill got through? A. I have no recollection of the date.

Q. Did he pay you the whole thousand dollars at once? A. He did not; no, sir; I did not receive it in one lump sum.

Q. On how many different occasions did he pay you? A. I cannot tell you.

Q. Where were the payments made? A. That I have no recollection of.

Q. Were they by check or in currency? A. It might have been paid by check or currency.

Q. Of course it may have been, but which was it? A. I am unable to tell you.

Q. What is your best recollection? A. I have no recollection as to how it was paid.

Q. If you have a recollection that it was paid and that it was paid in different amounts, don't you have any recollection as to whether it was paid in cash? A. I simply know I reimbursed myself for my services.

Q. Did you pay yourself or did he pay you? A. I could not pay myself because I had no authority.

Q. You said you reimbursed yourself; what do you mean by that? A. From moneys that were given to me from time to time.

Q. Given to you for what purposes? A. To use as I saw fit.

Q. You will note that on June 24th, 1905, the transfer of \$7,174.90 was made to your account, wasn't it? A. On what date?

Q. On June 24, 1905. A. Yes, sir.

Q. Do you recall how that was done? A. I haven't any details of the amounts.

Q. Do you not recall that a note was made for \$10,000, and that the company received the money on the note, paid you \$7,174.90, and credited the difference or paid the difference to Mr. Steigelwald? A. I do not know anything about any notes.

Q. That was the day on which you received this money, was it not? A. I cannot say as to that, no.

Q. Well, you received the money, as Mr. Multer testified, if my recollection is correct, either on or before that date; that was the date, that it was charged up on the books; isn't that correct? A. It appears to be correct, if it was charged up on that date, but I cannot say as to when I received it.

Q. Now, I show you three checks on the Colonial Trust Co., one dated July 8, 1905, drawn to your order by Mr. Steigelwald for \$500; two dated August 19, 1905, one for \$500 and one for \$250, drawn by Mr. Steigelwald to your order; did you receive those checks? A. I did; they bear my endorsement.

Q. And that was subsequent to the time of this payment of the \$7,174.90, which was on June 24, was it not? A. Yes, sir.

Q. What did you do with those checks; did you get the money on them? A. Yes, sir.

Q. Take the first one, the one dated July 8, 1905, where did you get the money on that? A. At the Gavitt National Bank.

Q. Where is that? A. Lyons.

Q. Where did you keep your personal account? A. I had no personal account.

Q. Where did your firm keep its accounts? A. At the Bank of Wayne.

Q. Why didn't you deposit that in your regular account in the Bank of Wayne? A. Because it was a personal matter.

Q. You went there and cashed it at the Gavitt Bank, did you not? A. Yes, sir.

Q. Got the currency? A. Yes, sir.

Q. What did you do with it? A. I cannot say now what disposition I did make of that.

Q. What was that \$500 for? A. I have no recollection.

Q. Why was Mr. Steigelwald paying you \$500 on July 8th, when he had paid you the \$7,000 and odd dollars on June 24? A. I have no recollection as to the intent of that, what it was drawn for, now.

Q. Was that part of your compensation that you spoke about? A. It may have been part of my expenses; it may have been part of my compensation.

Q. I show you these two other checks of August 19, 1905; what did you do with them? A. I have no recollection.

Q. Turn them over and look at the backs of them; see if that will refresh your recollection. A. It does not as to what they were for.

Q. What did you do with them? A. I had them cashed; one cashed at the Lyons National Bank.

Q. Where was the other cashed? A. Both cashed at the Lyons National Bank, yes, both.

Q. Both cashed there? A. Yes, sir.

Q. Was that where you kept your account? A. No, sir; I have no personal account.

Q. Was that where your firm kept their account? A. No, sir.

Q. Why did you have these cashed at the Lyons National Bank? A. I do not know of any particular reason why I did.

Q. Why didn't you go to the Gavitt Bank where you had the other cashed? A. I don't know that I had any special reason for going to the Gavitt Bank.

Q. Isn't it a fact that you did not want the banks to know the amount of currency you were drawing out on the order of Mr. Steigelwald? A. I do not know as that is so.

Q. Is that the reason you cashed one at the Lyons Bank and the others at the Gavitt Bank, and none at the bank where you kept the firm account? A. No, sir, that is not the reason.

Q. What were those checks given to you for? A. I have no recollection.

Q. Why did he give you two on the same day, one for \$500 and the other for \$250? A. I cannot tell you that.

Q. Why wasn't one check made for \$750; both drawn on the Colonial Trust Co. of New York, are they? A. I believe so, yes, sir.

Q. There was some reason for that, was there not? A. I cannot explain it.

Q. There was some reason why Steigelwald should draw two checks instead of one; Mr. Steigelwald drew them both on his personal account dating them the same day, one for \$500 and one for \$250; who was the money for; who got the \$500? A. I drew the money on both checks.

Q. Who was the \$500 to go to? A. I do not say it was to go to anybody.

Q. Who was the \$250 to go to? A. I do not make any statement as to who that was to go to.

Q. I did not say that you did; I am asking you? A. Not any one in particular, unless it was myself.

Q. Now, Mr. Zimmerlin, you are a business man and have been a business man for a great many years; the members of this Committee are business men, professional men. If a man is going to make you a payment of \$750 and draw it on his own account he does not make it in two checks in the sum of, one for \$500 and one for \$250, without a reason for it. This was five years ago. Search your memory for a moment and tell me your best recollection as to why the payments were made in this manner? A. I cannot give you any reason.

Q. I said, wait a moment. You are not waiting a moment. A. No, I do not need to. I can tell you now just as well —

Q. What is that? A. I can tell you now just as well as I can in an hour from now.

Q. That is, you have no recollection about it? A. No, sir.

Q. Don't that seem rather strange to you, that Mr. Steigewald should hand you the two checks drawn on the same date; doesn't that seem strange to you? A. I cannot say that it does.

Q. Well, it was unusual at least, was it not? A. Frequently a man draws two checks in one day, doesn't he?

Q. Were they given at different times on the same day? A. I cannot say; I have no recollection of that.

Q. Did you state to him that you needed \$500 for one purpose, and then at the same time or later in the day state to him that you needed \$250 for another purpose? A. I did not.

Q. Was the \$500 to go to one man and the \$250 to go to another man? A. I did not say so.

Q. I did not ask you whether you said so; was it so as a matter of fact? A. I have no recollection just what the purpose was, or what it was for.

Q. Unfortunately, I cannot refresh your recollection further than showing you the checks, showing your endorsement, and the source from which you drew them. A. I wish I might be able to.

Q. Now, where was Mr. Steigewald when he drew these checks? A. I could not say as to that, where he was.

Q. Was he in Lyons? A. He may have been.

Q. Certainly he may have been; was he in Lyons? A. I have no recollection. I have kept no tab on him to see where he was every day; sometimes he was in Lyons, sometimes in New York.

Q. Where was he when he handed you those checks? A. I don't know that they were handed to me; they may have been mailed to me.

Q. Were they handed to you or were they mailed to you? A. I have no recollection.

Q. Did he give them to you at your office or at his office? A. I said I have no recollection how I received them.

Q. Did you cash them the same day you received them? A. I have no recollection of that, when they were received, except the date given on the back.

Q. That is, you have no recollection in regard to this transaction other than what I placed right before you; is that right? A. That is right.

Q. Outside of that your memory is absolutely barren? A. I cannot give it.

Q. Most extraordinary, isn't it? A. Very strange.

Q. Did you ever have any other checks given you by Mr. Steigelwald, drawn on the Colonial Trust Company? A. I cannot say as to that.

Q. Now, when you had the talk with Mr. Steigelwald about going down and looking after the bounty in 1906, was anything said between you and him in regard to your compensation? A. Not especially so; no, sir.

Q. You began drawing in 1906 on the company at the rate of \$50 a week, on January 23; does that refresh your recollection as to when you went down to Albany? A. That would look as though I had drawn that money for the purpose of going to Albany.

Q. Well, did you? A. I did.

Q. Then you must have started in about January 23 that year; isn't that correct? A. You have the dates there; yes, sir.

Q. Does that refresh your recollection as to when you began your services? A. Only so far as the dates appear on that slip.

Q. There is no doubt about that; but with your recollection re-

freshed that way would you say that you started in work at Albany about January 23 of that year? A. The only thing that refreshes my memory is the fact that those dates are given; I have no data. I could not say whether I went on the 13th or on the 14th or on the 17th. I did not make a memorandum. I do not want to make a statement I do not know anything about.

Q. That is evident; but you did not draw any expense money before you went down, did you? A. I did not draw it until I got ready to go.

Q. As I say, you drew a check January 23, you drew \$50; February 12, you drew \$50; February 19, \$50; February 27, \$75; March 5, \$50; March 13, \$50, and so on down through the session, excepting that on the 23rd of April you drew \$100. Now, does that refresh your recollection that during 1906 you were down there practically every week after January 23rd? A. I rather think I was.

Q. Well, now, was there a bounty bill passed in 1906? There was, was there not? A. Not a bounty bill passed, appropriation for bounty.

Q. Don't you recall that it appeared yesterday by the Session Laws, that by chapter 686 of the Laws of 1906, that in that supply bill there was an appropriation for the deficiency, for the payment to the Lyons Beet Sugar Company for the season of 1905, \$31,280.09. That was a direct appropriation to your company, was it not? A. So it stated there in the law.

Q. And in addition to that, there was a general appropriation of \$15,000? A. You said, 1905.

Q. This is 1906. A. You made the statement for 1905.

Q. The appropriation of \$31,280.09; was not that for the deficiency for the season of 1905? A. Well, that's all right.

Q. Now, do you remember who you saw when you went down to Albany in regard to this bill? A. I called on Senator Raines frequently.

Q. What did you and the Senator say? A. Nothing said particularly about the bill.

Q. Well, you was there for nearly every week. Did not you say anything to him particularly about the bill? A. Asked him to look after the bill.

Q. What did he say? A. He said he would, the best he could.

Q. Why was it that you went down there every week, if the Senator had assured you that he would look after the bill? A. Went down to watch the legislation and see that the bill was taken care of.

Q. Who did you talk with, other than Senator Raines? A. Nobody.

Q. Did you talk with Mr. Burnett? A. I did not.

Q. You had talked with Mr. Burnett the year before, had you not? A. Yes, sir.

Q. Why did not you talk with Mr. Burnett the following year. 1906? A. I did not talk with him in 1906.

Q. Did not speak to Mr. Burnett at all? A. Not at all about that, no, sir.

Q. Now, what did you say to the Senator, if anything, when you saw him during the session of 1906, with relation to the company showing its appreciation? A. I did not say anything to him about that at that time.

Q. You were that season looking for a direct appropriation to your company of over \$31,000, were you not? A. I believe that is the sum.

Q. Well, did not you say anything to the Senator, that having shown your appreciation the year before, that you would show your appreciation again, referring to the company? A. I did not.

Q. Are you positive about that? A. Very positive.

Q. Do you recall when the Legislature adjourned in 1906? A. I cannot recall it, no.

Q. Well, it adjourned on the 3rd of May, 1906. Now, were you down to Albany after the adjournment of the Legislature? A. I can't say whether I was there later than that or not. I may have been.

Q. It seems that you drew \$40 for expenses on May 29th, 1906. Would that refresh your recollection as to whether or not you were down after the adjournment of the session? A. Yes, I must have been.

Q. Well, did you pay to Senator Raines or Mr. Burnett, or any other member of the Legislature during the season of 1906, any money in appreciation or otherwise, for their aid in the passage of the bill? A. I did pay Senator Raines during that season.

Q. When did you pay him? A. Sometime in the month of July.

Q. That was after the adjournment of the Legislature? A. Yes, sir.

Q. Where did you pay him? A. At Canandaigua.

Q. At his home? A. No, sir.

Q. Whereabouts in Canandaigua? A. At his office.

Q. Now, let us see if we cannot fix the date. Was it early or late in July? A. I can't say as to the date.

Q. Before or after the middle of the month? A. I can't say. I haven't any recollection.

Q. Before or after the Fourth of July — perhaps that would aid you? A. No, it would not aid me at all. I haven't any date.

Q. Did you go direct from Lyons to Canandaigua? A. I may have gone by way of Rochester.

Q. Well, did you go from Lyons to Canandaigua direct? A. Yes, sir.

Q. Went on that errand? A. I went on that errand; yes, sir.

Q. What time did you leave Lyons, do you recall? A. I can't recall that.

Q. Before noon or after noon? A. I could not say.

Q. What time did you arrive at Canandaigua? A. That I cannot state.

Q. Daylight or dark? A. It was not dark — after dark, no.

Q. It was not after dark? A. No.

Q. Was it in the forenoon or late in the afternoon? A. I can't give you that.

Q. How long does it take to go from Lyons to Canandaigua? A. It depends on how you go.

Q. Well, the route you took, according to your best recollection. A. I can't state what route I did take.

Q. The shortest route, how long would it take? A. It would not take more than six hours.

Q. The longest route ordinarily traveled, how long would it take? A. That depends on the connections you make. I can't say how long it would take.

Q. If you arrived before dark, you must certainly have left Lyons in the forenoon, would you not? A. Not necessarily.

Q. Well, you couldn't leave at noon and arrive before dark? A. Leave in the morning and get there before dark.

Q. You say it was not dark when you got to Canandaigua, from which I will ask you, considering the distance and time to make the trip, if you don't feel that it must have been in the forenoon when you left Lyons? A. I can't say when I left Lyons.

Q. Did you leave Lyons in the forenoon? A. I can't say.

Q. If you arrived at Canandaigua before dark, did you leave Lyons in the forenoon or afternoon? A. I can't say.

Q. How long did you leave Lyons before you arrived at Canandaigua? A. I have no recollection of that.

Q. It takes six hours by the shortest route? A. I can't say.

Q. How long does it take by the shortest route? A. I can't tell you.

Q. Can't you go in four hours? A. Might be able to go in four hours.

Q. Can you go in three? How many miles is it? A. Not very well.

Q. Then it is between three and four hours? A. Somewheres in that neighborhood. I can't tell you exactly.

Q. When you arrived in Canandaigua, what did you do after you got off the train? A. Called at his office.

Q. Went direct to his office; and was the Senator there? A. I can't say whether he was there when I arrived there or not.

Q. Well, did he shortly come to his office after you arrived? A. He came there some time during the day that I was there.

Q. Did you go to the hotel? A. I did not.

Q. When the Senator came in, was anyone else present excepting you and the Senator? A. There was not.

Q. Now, just tell us what occurred? A. I handed him the money.

Q. Didn't you first say, "How do you do, Senator?" A. Perhaps I did greet him as Senator. I should think I did.

Q. Did you then say anything to him in regard to the money, or simply hand it to him? A. I handed him the money, and said that that was a slight token of appreciation; that I wished to hand him the package.

Q. And did you state to him what the amount was? A. I did not; no, sir.

Q. What was the amount? A. Three thousand dollar-.

Q. Was it in currency, or in a check or draft? A. Currency.

Q. And from whom did you receive the currency? A. I can't say exactly as to that. I may have received the currency — it may have been handed to me, or I may have had a check cashed.

Q. Of course, it may have. But now, give us your best recollection, whether you received the currency or a check from the party who handed it to you? A. I can't say as to that.

Q. If you received the check, where did you have it cashed? A. Bank of Wayne, if I received a check.

Q. Then an examination of your account in the Bank of Wayne would show that you had a check of \$3,000 cashed on or about that date, in the event that you received it in a check; is that correct? A. My account? No.

Q. But that was where you kept your account? A. The firm's account was kept there.

Q. Well, did not you have it deposited to the account of the firm? A. I did not. If I had that check cashed, I drew the currency for it.

Q. Why did you have that check cashed at the Bank of Wayne, and the other checks you had cashed at banks other than the ones you patronized? A. I can't say any particular reason.

Q. Now, who handed you the check or the currency; whichever it may have been? A. Why, either Mr. Steigelswald or Mr. Multer; I cannot say.

Q. What is your best recollection? A. I have no recollection as to who did hand it to me.

Q. Where did they hand it to you; where were you at the time? A. I can't say as to that.

Q. In your office or their office? A. I have no recollection as to where they handed it to me.

Q. This was only four years ago? A. A great many things happen in four years.

Q. Yes, but not of that character? A. Perhaps not.

Q. Now, when you handed the money to the Senator, and told him that was an expression of appreciation on behalf of the company for what he had done, what did he say? A. He thanked me for it.

Q. What else did he say? A. I can't recall any conversation that took place.

Q. How long did you remain with him? A. Only a few moments.

Q. And then what did you do? A. I went home.

Q. Direct? A. Direct as I could.

Q. What time did you arrive in Lyons? A. I can't say.

Q. Daylight or dark? A. I haven't any recollection as to what time I reached Lyons.

Q. Did not that journey and that errand, and what had occurred make any deeper impression than that on your memory? A. No, sir. I have no recollection of what time I returned.

Q. Now, you don't have any recollection of who gave you the money, whether it was currency or whether it was a check. You have no recollection when you left Lyons. You have no recollection of the time you arrived at Canandaigua. You have no recollection of the time you left Canandaigua, or the time you arrived at Lyons. Now, can't you just for a moment search your memory and see if you cannot give us some information? A. I would be very glad to do so if I could.

Q. Would you try, just for a moment? A. I would try, if I could.

Q. Well, won't you try now? A. I can't do it. I can't give you the time.

Q. Well, did you pay any money to any other person than Senator Raines for services in 1906 (showing witness paper)? A. I did, yes, sir.

Q. To what other person did you pay money? A. Mr. Betts.

Q. How much did you pay Mr. Betts in 1906? A. \$250.

Q. Are you sure it was \$250, or \$300? A. \$250.

Q. When did you pay him? A. Some time in the month of July, I should think. (Witness looks at paper.) Month of July.

Q. About what time in the month? A. Between the 15th and the 25th. I can't give you the exact date.

Q. Where did you pay him? A. At his office.

Q. Who was present? A. Nobody.

Q. What did you say? A. I handed him the money and told him that that was in appreciation, a slight gift for himself from the company.

Q. What had he done in relation to the bill, in 1906? A. Nothing special, any more than his natural office.

Q. Was he connected with the Legislature in 1906? A. He was, yes, sir.

Q. In what capacity? A. Chief of the Revision Department.

Q. In the Assembly? A. In the Assembly, yes, sir.

Q. Had you talked with him in regard to the bill when you were down there during the session of 1906? A. I may have had some conversation with him.

Q. What is your best recollection as to whether you did or not? A. I think I did.

Q. If you did, what did you say to him? A. I can't remember the exact language I used.

Q. Did you tell him of the importance of the bill to the company? A. I told him the bill was quite important.

Q. Did you say anything with reference to the company showing its appreciation in the event the bill went through? A. I did not.

Q. Did you promise that you would pay him any money in the event that the bill became a law? A. I did not.

Q. When you paid him this \$250 — was it \$250 or \$300? A. \$250.

Q. How much had you paid him the year before? A. \$300.

Q. Why did you make the difference this year between \$250 and \$300, as I note that you drew \$300 July 15th, 1906? A. I think \$50 of that was for my expenses.

Q. What expenses did you have in July? A. I had more or less expenses. Sometimes my expense account was shy — that is, more moneys paid out than the company were furnishing me, and I think that that \$50 was to reimburse me.

Q. When you drew the \$300, what did you state to Mr. Steigerwald that it was for? A. I did not make any statement to him at that time.

Q. Of whom did you ask the \$300? A. I think I spoke to Mr. Steigerwald.

Q. What did you say to him? A. I would like \$300.

Q. What did he say? A. He says, all right; I will see that you get it.

Q. Was this before or after you had gotten the \$3,000? A. I can't say. I have no recollection just when I got the \$3,000. It was in the month of July.

Q. Did you get the money for Betts before or after you got the money for Senator Raines? A. I have no way of fixing the date. The Senator Raines \$3,000.

Q. When you handed Mr. Betts the \$250, was it in a check or currency? A. Currency.

Q. Where did you get the currency? A. The currency may have been handed me. I don't know that I got a check, I have no recollection whether that was a check or currency.

Q. What did Betts say? A. He thanked me for it.

Q. Is that all he said, just "Thank you." A. That's all.

Q. Mr. Burnett died early in 1907, did he not? A. I believe so. I can't say when his death occurred.

Q. Mr. Burnett died, that's correct, isn't it? A. I don't know. I have no knowledge of when he did die. I have no recollection.

Q. I will state for your information that he died during the session of 1907, so that Mr. Burnett was there during the session of 1906. Did you pay any money to Mr. Burnett that session, in appreciation of what he had done? A. I did not.

Q. Why this distinction between 1906 and 1905? 1905, remember, the appropriation was \$18,000, and in 1906 there was over \$31,000 went direct to your company. Now, why did not the company feel called upon to show its appreciation to Mr. Burnett in 1906, the same as it had in 1905? A. Circumstances were somewhat different.

Q. In what respect? A. In 1905, there was a bill before the Legislature in which he rendered some services.

Q. That is, a bill amending generally the agricultural law with reference to bounties? A. An entirely new bill, practically.

Q. In 1906, in what respect were conditions different then? A. There was no bill at that time, only providing for an appropriation to carry out the provisions of the bill of 1905, as I recollect.

Q. Now generally — and please answer after deliberation — did you, during the session of 1906, pay to any other person or persons than those you have named, any money on behalf of the company or otherwise? A. I did not.

Q. For services rendered in the Legislature or otherwise? A. I did not.

Q. Now, coming down to the year 1907, were you retained to represent the company at Albany in 1907? A. I was, yes, sir.

Q. By whom? A. By the company.

Q. By whom, representing the company? A. Mr. Steigerwald, I believe, was president at that time

Q. Well, were you retained by Mr. Steigerwald? A. I was asked to perform the same services that I had performed the year previous.

Q. And did you assent to the proposition? A. Yes, sir.

Q. Did you receive any compensation in 1906 for the services you had rendered? A. I received compensation in all those years.

Q. You told me that you received none in 1901, 1902, 1903, and 1904; that your first compensation was in 1905. Now, were you compensated personally for your services in 1906? A. I was.

Q. In what amount? A. That, I can't state.

Q. About what amount? A. It may have been ten hundred or may have been fifteen hundred, during that season.

Q. Did you not state yesterday that your entire compensation for all the years during which you served did not exceed \$2,000? A. I did not make that statement. I made the statement that I received between two and four thousand, perhaps.

Q. Did you not make the statement to me and Mr. Hurrell, that the entire compensation received by you during all the years during which you represented this company, did not exceed \$2,000, in your judgment? A. That was not here.

Q. Did you not make that statement to me at our office? A. I may have made that statement to you at your office.

Q. What was the total amount, to your best recollection, of your compensation, during the years when you acted for the company at Albany? A. I cannot give you the total.

Q. Well, about how much? A. I cannot specify.

Q. Would it exceed? A. It would, yes.

Q. Would it exceed \$2,500? A. I cannot give you the entire total.

Q. Would your best judgment be that it would be between \$2,000 and \$2,500? A. You are trying to get me to give a specific amount, and I can't do it.

Q. No. A. Yes, and you are leading me up.

Q. I am asking you if in your best judgment it was more than \$2,500? A. Yes, it was more than that.

Q. Can you tell me how much beyond? A. No.

Q. Can you say it was beyond \$3,000? A. I can't say just how much it was beyond that.

Q. Why is it that they began compensating you in 1905, when you had rendered those services in 1901, 1902, 1903 and 1904, without compensation? A. I think I made the statement that in earlier years the company was not able financially to make compensation, and my services were very slight at that time.

Q. Well, certainly the appropriations were large, were not they? A. I had nothing to do with that. I didn't get the appropriations.

Q. No, but the amount the company was to receive. A. I don't think my services were based on any percentage of the appropriation.

Q. Let us come down to 1907 again. You were employed by Mr. Steigerwald to come down. What did you do? A. I went down as I did in previous years.

Q. And whom did you see? A. I saw the Senator.

Q. With what other Legislators did you talk? A. I did not talk with any.

Q. Did you talk with Mr. Betts? A. I did not.

Q. Did you talk with Mr. Burnett?—He died early in the season of 1907—prior to his death? A. I did not, no.

Q. There was a bill passed in 1907, was there not? A. Yes, sir.

Q. And as it appears by the evidence here, carrying an appropriation of \$41,444.06 for the deficiency in the season of 1906. Now, do you recall talking with anyone else than Senator Raines in regard to that appropriation? A. I believe I made the statement a moment ago that I did not.

Q. Do you now recall talking with anyone else? A. I did not.

Q. Did you pay any moneys to Senator Raines or any other person during the season of 1907? A. I did pay Senator Raines a sum of money, yes, sir.

Q. When? A. I think late in the season.

Q. Before or after the adjournment of the Legislature? A. After.

Q. The Legislature adjourned in 1907 on June 26th. After the adjournment of the Legislature? A. Yes, sir.

Q. Where did you make the payment? A. Canandaigua.

Q. In what amount? A. \$3,000.

Q. In currency or by draft? A. In currency.

Q. Whereabouts in Canandaigua? A. At his office.

Q. Who was present? A. Nobody.

Q. Did you go direct from Lyons, there? A. I did, yes.

Q. From whom did you receive the currency? A. I have no recollection. I have no definite recollection as to that.

Q. Did you receive it from Mr. Steigerwald? A. I don't know whether he paid — I have no recollection as to currency or draft or a check.

Q. If you received it by draft, where did you get the currency on the draft or check? A. Bank of Wayne, on a check.

Q. Did you go direct from Lyons to Canandaigua? A. I did.

Q. The same as you did the year before? A. Yes, sir.

Q. What time did you leave Lyons in 1907? A. I have no recollection as to the time I left there.

Q. Do you have any recollection of the time you arrived at Canandaigua? A. I have not.

Q. And on your arrival at Canandaigua, was it dark or daylight? A. Daylight.

Q. What did you do when you arrived there? A. Went to his office.

Q. Did you find the Senator there? A. I can't say whether he was there when I first arrived or not. (I can't say that.)

Q. Was there anyone else there at the office? A. There was always somebody there. He had two offices, or a suite of offices.

Q. You mean, different rooms? A. Different rooms, yes, sir.

Q. Was his office open when you went there? A. It was.

Q. Did you await his coming? A. I can't say whether I did or whether I stepped out and came back.

Q. Do you recall whether he was some time in coming, or whether he came in shortly after you arrived? A. I can't recall that.

Q. Was anyone present when you made the payment? A. There was not.

Q. Just tell us what occurred. A. I handed him the money and told him that that was a slight appreciation for services that he had rendered the company.

Q. What did he say? A. He thanked me for it.

Q. What else did he say? A. No special conversation after that.

Q. Did you tell him the amount? A. I did not, no, sir.

Q. Was it in an open package, or was the money in a sealed package? A. In an open package.

Q. Large bills or small? A. I can't say as to the denominations.

Q. What was said afterwards? A. Nothing. I visited for a moment and directly left the office.

Q. Did you say anything in regard to the payment the previous years, in 1906? A. No, sir, I did not.

Q. Or what you had paid him in 1905? A. No, sir.

Q. Where did you go after leaving the Senator? A. I can't say. I may have gone to Rochester, possibly.

Q. Did you go to the hotel? A. I did not, no, sir.

Q. Did you go directly back to Lyons, or did you stop on the way? A. I may have stopped at Rochester, possibly.

Q. Over night? A. No, I don't think so.

Q. Do you think you stopped at Rochester over night on your way back in 1906? A. No, sir.

Q. Do you know what time you arrived at Lyons back, about what time? A. I could not say.

Q. Daylight, or after dark? A. I could not say whether it was daylight or dark.

Q. Now, did you pay any other person than Senator Raines in 1907? A. I did not, no, sir.

Q. Did you pay anything to Mr. Betts that year? A. I did not.

Q. Why was the company showing its appreciation — Mr. Betts was not an officer of the Assembly in 1907, was he? A. He was not an officer. He was not an officer at that time.

Q. Is that the reason why you did not pay him? A. I pre-

sume that is a good reason. That is correct, he was not connected at that time — a gentleman by the name of Backus.

Q. Did you pay any other employee or member of the Legislature in 1907, other than Senator Raines? A. I did not. Mr. Backus of Tonawanda had received an appointment at that time — I don't know just where — he was in the Revision room.

Q. Now, the payments made then in all, if I recall them correctly, was \$9,000 to Senator Raines, and \$1,500 to Mr. Burnett, is that right? A. That's right.

Q. Has my examination this morning refreshed your recollection any in regard to whether or not you paid Mr. Burnett an additional \$1,500 to use as he pleased? A. I did not pay him \$1,500. I paid him one sum of \$1,500.

Q. You are still inclined to think that Mr. Steigerwald's recollection is correct, are you? A. It is, yes, sir.

Q. You recall that yesterday when you spoke about paying Mr. Burnett the additional \$1,500, you not only recollected the fact, but you recollected what you said to him, and that you had in mind the fact that it might be for other persons. Now, why do you think you were mistaken? A. I was mistaken.

Q. Have you anything to base your confidence on except the statement of Mr. Steigerwald? A. I think that is quite sufficient.

Q. It is sufficient for you? A. Sufficient for me, yes, sir, I am satisfied.

Q. That is you would be satisfied to change your recollection, the statement you have made here under oath, on a statement made to you by Mr. Steigerwald that he thought you were mistaken? A. I am willing to change my evidence in that case because I was giving it from recollection only, and Mr. Steigerwald corrected me as regards my knowledge, and I am satisfied that he told the truth.

Q. Did you receive any compensation during the time you were an officer of this company? A. I did, yes, sir.

Q. How much? A. \$300.

Q. As salary? A. Salary for two months' services.

Q. What position were you holding at that time? A. President.

Q. Did you ever hold any other position in the company? A. I have, yes, sir.

Q. What position? A. Vice-president.

Q. How long were you vice-president? A. From April 8, 1908, to October 15, 1909.

Q. Did you receive any compensation as vice-president? A. I did not.

Q. You were examined, were you not, Mr. Zimmerlin, before the referee in bankruptcy in the matter of the Lyons Beet Sugar Refining Company, the matter pending in the District Court of the United States for the Western District of New York? A. I was, yes, sir.

Q. You were examined on or about August 3rd of this year, were you not? A. I believe that is the date.

Q. And in that examination you were interrogated, were you not, with reference to these payments of money to Senator Raines and to Mr. Burnett? A. I was.

Q. Did you testify at that time that you had paid Senator Raines \$3,000 in 1906? A. I don't remember just what testimony I gave, my testimony at that time was that I paid the Senator two sums of \$3,000 each, if I recall the testimony.

Q. That is you had paid him \$3,000 in 1905, and \$3,000 in 1907? A. Perhaps that is so, I don't remember now.

Q. Did you testify anything in that examination, or were you interrogated with reference to your payment to Senator Raines in 1906? A. I don't remember whether I was interrogated or whether I made a statement, I don't just remember now.

Q. Do you remember whether or not you testified in that examination as to any payments to Senator Raines in 1906? A. I have no recollection whether I made any testimony at that time or not in regard to 1906.

Q. Well, did you make a payment in 1906? A. I did, yes, sir.

Q. In the manner in which you have testified to here? A. Yes, sir.

Q. Well now, Mr. Zimmerlin, can you tell us before leaving the stand why it was that you made payments only in the years 1905, 1906 and 1907 in what you term appreciation on the part of this Beet Sugar Company, when large appropriations were made in 1901, 1902, 1903 and 1904, during which years you say you made no payments. Why was that? A. I can't give you any reason, only I know that there were no payments made. There

was a bill in the Legislature at that time. The circumstances were entirely different.

Q. They were different from what they were in 1905, because then a general act was passed changing the whole Agricultural Law somewhat, but in 1906 and 1907 the appropriations were made in the same manner. You say there wasn't any difference between the years 1906 and 1907, and the years 1901, 1902, 1903 and 1904. Does that refresh your recollection that perhaps you made payments in 1901, 1902, 1903 and 1904? A. I did not make payments.

Q. Did you represent the company in Albany in 1908? A. In 1908, I think the bill was vetoed.

Q. Yes, the act was repealed in 1908. Did you represent the company in Albany in 1908? A. If there was any representation there it was myself that represented them.

Q. Now, that is only two years ago, and that was the very last year. That should fix it definitely in your recollection. Now, give us the facts — were you down at Albany in 1908? A. I cannot say as to that. The statement there will show whether there were any expenses at that time.

Q. Were you down there in 1908, endeavoring to get an additional appropriation? A. I was not. The Governor had already given notice that that would be the last. He attached a memorandum to the last bill that he signed that there would be no further appropriation.

Q. That is when the Governor signed the bill in 1908 he gave notice, did he not, that he would not sign another bill carrying an appropriation for that purpose? A. He did, yes, sir.

Q. Then you were not down there in 1908. Now, did you from time to time advance your own money for the payment of your expenses at Albany, or did you receive your expense money week by week as it was expended? A. Sometimes I advanced my own real expense money, sometimes I did.

Q. Did you advance any of the money to make these payments to Senator Raines, to Mr. Burnett and to Mr. Betts, as you have testified? A. I did not.

Q. Those were all payments from the funds of the companies, from moneys which were given to you for that purpose, were they? A. Yes, sir.

FREDERICK STEIGERWALD, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Steigerwald? A. New York city.

Q. Whereabouts? A. Staten Island.

Q. Whereabouts in Staten Island? A. Tompkinsville.

Q. How long have you resided there? A. Since about May, 1908.

Q. Prior to that where did you reside? A. In Lyons.

Q. How long did you reside in Lyons? A. About six years.

Q. Prior to that time where did you reside? A. In New York.

Q. Whereabouts in New York? A. Staten Island, in Stapleton.

Q. What was your business prior to your going to Lyons?

A. I was in the feed business.

Q. Feed business? A. Feed and grain.

Q. Dealing in by-products? A. Yes, sir.

Q. By-products of beet sugar manufacturers? A. Yes, and other industrial enterprises.

Q. What was the occasion of your taking up your residence in Lyons? A. I was given a contract for the refuse of the sugar factory.

Q. Of what company? A. By the Empire State Sugar Company.

Q. Was that the parent company, or the leasing company? A. It was the parent company.

Q. How long did you have that contract? A. Five years.

Q. During the continuation of that contract did you become connected with either one of these companies? A. I did.

Q. Which one? A. The original company, the Empire State Sugar Company.

Q. In what capacity? A. Manager and treasurer.

Q. When were you first elected? A. About March or April, 1902.

Q. What salary did you receive? A. I believe my first salary was \$5,000 a year.

Q. How long did you remain connected with that company in that capacity? A. Until it went into bankruptcy.

Q. And when did it go into bankruptcy? A. I believe in August, 1903.

Q. When it went into bankruptcy in August, 1903, what happened with relation to the assets of the company? A. I don't understand the question.

Q. What happened with relation to the plant? A. Oh, I beg your pardon. Before that time a lease had been made of the plant to the Empire Beet Sugar Company.

Q. Then at that time the Empire State Beet Sugar Company, when it went into bankruptcy, was not operating its plant, but its plant had been leased to the Empire Beet Sugar Company, is that right? A. That is right.

Q. Were you an officer of the leasing company? A. I was.

Q. In what capacity? A. President.

Q. How long did you continue president? A. Up to date.

Q. The company is still in existence? A. It is still on paper.

Q. Were you also manager as well as president? A. I was.

Q. What was your salary as president of the leasing company?

A. I believe about the same, \$5,000 a year.

Q. Now, when the leasing company finally surrendered the plant what company took control of it? A. The Lyons Beet Sugar Refining Company.

Q. When was that company organized? A. In 1904.

Q. Who organized it? A. The main interests in the old Empire State Sugar Company.

Q. Did it purchase the plant of the old Empire State Beet Sugar Company? A. It did.

Q. Was it sold in bankruptcy by the trustee? A. Yes, sir.

Q. Do you recall the purchase price? A. It was sold subject to the mortgage. It was a new concern and it assumed the mortgage.

Q. Do you recall what the mortgage indebtedness was? A. About \$470,000.

Q. What was the capacity of the plant? A. 600 tons, 600 tons of beets a day.

Q. In 1897 the State entered upon the policy of paying a

bounty on the amount of sugar manufactured by these companies, did it not? A. I don't know.

Q. Do you know when the bounty started? A. I don't know.

Q. The bounty was in existence at the time when you first became connected with the business, was it not? A. It was.

Q. In what amount, do you recall? A. Half a cent per pound of sugar manufactured.

Q. The payment being made to the manufacturer of sugar? A. Yes, sir.

Q. Prior to that time it had been one cent a pound, had it not? A. I believe so.

Q. What percentage of sugar is usually extracted from beets grown in that part of the country at that time on the average?

A. From ten to twelve per cent.

Q. Then at one cent a pound on a ton of beets would make how much sugar, what would be the bounty paid on a ton of beets?

A. At ten per cent. it would make 200 pounds of sugar, and hence it would be \$2.

Q. What was the usual price paid to the farmers for beets at that time? A. \$5 per ton.

Q. Then the company paid the farmer \$5 a ton and received \$2 from the State, making the net payment to the farmer about \$3 a ton, or rather making the net expense for beets about \$2 a ton? A. That was true the time the bounty was one cent a pound.

Q. And when it was reduced to one-half a cent a pound it was then one-half of that? A. Yes, sir.

Q. Did you own any stock of the Lyons Beet Sugar Company? A. I did.

Q. How much? A. About 25 per cent. of the entire issue.

Q. In connection with the ascertaining of the amount of the bounty, weighing of the sugar, and the collecting of the bounty, there were a great many employees appointed by the Agricultural Department of the State, were there not, to perform that work? A. Yes, sir.

Q. How many do you think generally were connected with your factory in Lyons, who were appointed by the State Department? A. It would vary.

Q. About how many? A. We had as many as 65 to 70 or 75, and we had as few as 40 or 45, I should judge.

Q. Now, these 65 or 70, or the 45 as you stated, were they carried during the whole year or during the campaign? A. During the campaign.

Q. After the campaign how many were carried, a smaller number? A. There were no State employees.

Q. None whatever? A. None.

Q. Those employees were appointed by the Department of Agriculture? A. They were. You are now talking about the earlier years?

Q. Yes, the earlier years. Subsequently did the number of employees increase or did it decrease? A. The decrease or increase was simply regulated by the size of the crop and the number of stations from which beets were drawn.

Q. Were those employees appointed from the neighborhood of Lyons and surrounding communities, or were they appointed from different parts of the State? A. They came from all over the State.

Q. Did you or any officer of the company ever interest yourself in securing the appointment of any individuals to these positions? A. Not that I remember.

Q. Did you make any recommendations to the Department, or did any other officer of the company with reference to these appointments of employees of the State? A. You are talking about the early years?

Q. Yes. A. Not that I remember.

Q. Did they during the later years? A. Well, it was the company's choice to appoint.

Q. When did that change take place? A. I think that took place in 1905 or 1906.

Q. Did the company, now having the power of appointment, also have to pay them for their services? A. Yes, sir.

Q. How many did you usually have on your roll during the campaign in the years, the later years you have mentioned? A. About the same number as before.

Q. What was your system in making these appointments, from whom did you get suggestions or how did you make selections? A. I would as a rule go through the list of the previous year and select the men that had been giving satisfaction.

Q. Were you ever urged by members of either house of the Legislature or other officer of the State to make appointments during those years? A. I cannot say that I was urged.

Q. Were you requested? A. I can't admit that much.

Q. How much will you state — what will you state to be the fact? A. Suggested.

Q. Suggested — well let us take that word. Were the different men suggested to you by members of the Legislature? A. That may have been the case.

Q. Was it or was it not? A. My recollection is not good enough on that.

Q. Don't you have a recollection as to whether or not members of the Legislature, to whom you were appealing for this bounty from time to time, made suggestions to the company as to who should be appointed during the campaign for the purpose of performing these services? A. I remember that there was a request of that kind, I believe, by Senator Raines.

Q. A request — do you mean by that that there was only one request? A. That I don't remember, Judge Bruce.

Q. When you say a "request," do you mean that from time to time requests were made for the appointment of persons to these positions? A. I didn't say that, my recollection is not good enough as to that.

Q. Can't you refresh your recollection as to that fact and tell me what the fact was? A. I am sorry I can't do it at present.

Q. Did anyone except Senator Raines make suggestions to you for the appointment of individuals? A. Not that I remember.

Q. Now, the life of this business depended upon the State making appropriations for bounties, did it not? A. Practically.

Q. Didn't it in truth? When the State ceased to make appropriations the industries ceased, did they not, practically? A. Not necessarily.

Q. Well, the State ceased making appropriations in 1907, and how long did the business continue after that? A. Two years.

Q. For how long? A. The last year the business was carried on was the season of 1909.

Q. Are there to-day any beet sugar manufacturing plants in the State? A. No, sir.

Q. When you first became connected with the business what did you do with reference to obtaining a continuance of the appropriations? A. There was very little to do, Judge Bruce.

Q. What did you do, if anything? A. When I first became connected with it it was in the spring of 1902, and I don't think I did anything.

Q. Did you have anyone to represent you at Albany with reference to the matter? A. In what year?

Q. The first year you were connected with it, in 1902? A. No, sir.

Q. Did you hear Mr. Zimmerlin testify? A. I did.

Q. Did you hear him testify that he represented the company in Albany during the session of 1902? A. I did.

Q. Did you know of that representation? A. That was before my time, Judge Bruce.

Q. When was your time? A. As I have stated, the end of March or early in April when I became connected with the company.

Q. In 1902? A. Yes, sir. I don't believe that Mr. Zimmerlin in that year had anything to do with me.

Q. The Legislature adjourned on March 27th, 1902. You think that the matter had been determined before you became connected with the company? A. That is evident.

Q. Well, let us take the year 1903. What was done by you with reference to appropriations during the year 1903? A. Mr. Zimmerlin had been going down there before that time for the sugar company, and suggested to me that it was about time to see to the bounty in Albany.

Q. You knew then at that time that he had been down in the previous year, did you? A. Yes.

Q. You were aware of that? A. Yes, that was part of my business.

Q. What was part of your business? A. To find out the way the concern had been managed before.

Q. Before you became connected with it then you investigated with reference to this matter? A. I did.

Q. With whom did you talk? A. Naturally I suppose it was with Mr. Seymour Scott, my predecessor in office.

Q. What did he say with reference to Mr. Zimmerlin's activity? A. That he had been going down there to look after the company's interest in bounty matters.

Q. What did he say with reference to any expenses of Mr. Zimmerlin while there? A. Nothing that I now remember.

Q. What did he say with reference to any compensation to Mr. Zimmerlin for that work? A. Nothing that I now know.

Q. Did he say that Mr. Zimmerlin had found it necessary in order to accelerate matters down there to use any funds? A. Not that I remember.

Q. If he had stated that to you you would remember it, wouldn't you? A. I think I would.

Q. What is your recollection then as to whether he did or did not say anything to you about that matter? A. I don't remember it, and if he had said it I would remember it and therefore it follows that he didn't say it.

Q. That is good logic. Now, what did you say to Mr. Zimmerlin in 1903? A. As I said before, Judge Bruce, Mr. Zimmerlin came to me and suggested that it was about time for him to go down to Albany again.

Q. Do you recall what time of year it was that he came to you? A. No, sir.

Q. Was it before or after the convening of the Legislature? A. That I don't recall.

Q. He volunteered his services, did he? A. He did.

Q. What did he say he thought it would be necessary for him to do? A. Simply to look after the legislation.

Q. What did you reply? A. I said all right, Zimmerlin, go down there when you think it is time.

Q. What was said in regard to compensation? A. Nothing in particular, but it was understood that he was to have his expenses, and if he ever wanted anything extra for his services I always stood for that.

Q. You say that was understood. Now, this was the first time you had talked with him, was it not? A. Yes, sir.

Q. It must have been mentioned then, wasn't it? A. I think it is not necessary for a man to mention the fact that when he offers himself to perform services that he is entitled to have his expenses and compensation.

Q. Yes, but here is a man that comes and volunteers his services for the first time, and says it is about time to have a matter attended to. Was anything said to you at that time or by you with reference to any compensation to be paid to him? A. As I said before, not that I remember.

Q. Well, did he go down? A. He did.

Q. How frequently? A. I will have to consult the books to see, the checks that we sent to him.

Q. What is your recollection independent of the books; have you any? A. Not very often, I suppose.

Q. Did he report to you when he came back each week? A. No. Each week; I beg your pardon?

Q. Or whenever he came back, did he report to you? A. Not at once; I would meet him on the street casually and he would tell me.

Q. Referring to the year 1903, what did he say to you from time to time with reference to the success of his work down there? A. Very little.

Q. What was that little? A. Hardly anything; simply that he had been down there.

Q. Did he say with whom he had talked? A. Not as I remember.

Q. Didn't he mention anyone that he had talked with in regard to it? A. Not that I remember.

Q. Were you at that time acquainted with Senator Raines? A. I was not.

Q. When did you first become acquainted with the Senator? A. In 1907 or 1908, when I went down to Albany.

Q. Had you never met him before? A. Never in my life.

Q. Were you acquainted with any other members of the Legislature? A. Not that I know.

Q. You were acquainted with Mr. Smith, your own member? A. I had seen him just casually.

Q. Hadn't you ever discussed with him the requirements of an appropriation in order that the industry at Lyons might be continued? A. Not that I remember.

Q. Did you know Mr. Burnett? A. No, never met him.

Q. Did you know Mr. Betts? A. I do.

Q. Did you ever speak with Mr. Betts about the necessity of an appropriation being made in order that the industry at Lyons might continue? A. I do not believe I did.

Q. Now, going back again to 1903, let us take it up chronologically; do you recall what happened in that year with reference to the appropriation? A. No, I do not.

Q. The evidence here shows that in 1903 there was an appropriation of \$30,000; now do you recall whether Mr. Zimmerlin saw you immediately after the appropriation was made? A. I do not.

Q. Do you recall whether he talked with you after that? A. I do not.

Q. Did he tell you at any time during that year, either before or after the adjournment of the Legislature, that he had found it necessary to use money for the purpose of securing the passage of the bill? A. He did not.

Q. Well, what did you pay him for his services in 1903, do you recall? A. Just his expenses, whatever the books show.

Q. Did you pay him anything for his compensation in addition? A. I do not know.

Q. Did he tell you of any expense other than his traveling expenses and hotel bills? A. Not that I remember.

Q. What happened in 1904? A. The same course; it took the same course as in 1903.

Q. Were there any different arrangements between you and him in 1904 than in 1903, with reference to his compensation or his expenses? A. No.

Q. Now, in 1903 or 1904, Mr. Steigerwald, did Mr. Zimmerlin tell you that he had paid out any money during those years other than his ordinary traveling expenses and hotel bills? A. He did not.

Q. Do you remember the amounts paid him by the company in 1903 and 1904? A. I did not get the books, Judge Bruce.

Q. Yes, but I do not happen to have the books. A. I do not remember, sir.

Q. When do you first remember having paid him any amount in excess of his traveling expenses and hotel bills, what year? A. That is hard for me to say for this reason, that I do not know

that out of the moneys that were from time to time given him he retained for other than traveling expenses and hotel bills.

Q. I show you vouchers — A. My own checks. .

Q. For 1904; March 4, 1904, drawn by you to his order, on the New York Produce Exchange Bank, \$300, October 13 of the same year, drawn on the same institution, by you, to his order, \$250; those are the only two that I have. There is a payment of \$550 on those two dates. Do you recall any other payments to him during 1904? A. No.

Q. Only recall these two? A. That is all he ever got from me in that year, sir; I gave you all the checks that I ever drew.

Q. Are you positive about that? A. Yes, sir; I searched my papers and that is all I had.

Q. Well, now, in what method were his expenses paid in 1903; we have no checks for that year, 1903; these are 1904? A. It must have been by checks.

Q. Certainly, and in what amounts do you think? A. I don't remember; very small, unquestionably, any large amounts would be in my mind, Judge Bruce.

Q. Well, let us go down another year, in 1905; what happened in 1905? A. Permit me to straighten you out on what I think is a wrong impression as to these checks. You believe that these checks were given him largely in connection with his Albany trips. That is only true in part. In part they paid him for his services in connection with the reorganization of the company.

Q. What services did he render in connection with the reorganization of the company? A. He was one of the reorganization committee.

Q. What year was that? A. 1904.

Q. And how much did he receive in 1904 for his services as a member of the reorganization committee? A. Either one or both of those checks were for that purpose.

Q. What is your best recollection now, one or both of them? A. I do not remember, Judge Bruce.

Q. The larger one or the smaller one, if only one of them? A. I don't remember.

Q. Were you a member of the reorganization committee? A. I was not.

Q. Do you remember what other compensation the other members of the reorganization committee received? A. Very little.

Q. About how much? A. Much less than Mr. Zimmerlin.

Q. Why did he receive more than the others? A. Because he did most of the work.

Q. What is your best recollection now as to the amount he received for his services as a member of the reorganization committee? A. Either one or both of those checks.

Q. If he received them both, how was he paid, then, for his expenses? And his work down at Albany? A. Then those expenses must be in the beet sugar books.

Q. Come down to the year 1905; what happened in 1905; the same thing? A. In which respect, please?

Q. In regard to legislation necessary for the purpose of carrying a bounty. A. Mr. Zimmerlin suggested again that he go down to Albany.

Q. Did he volunteer his services each year? A. Yes, sir.

Q. You did not seek him out? A. No.

Q. He came to you? A. Yes, sir.

Q. He was not connected with the company — A. He was not connected with the company.

Q. Was he? A. Not that I remember.

Q. He came to you and volunteered his services? A. Yes, sir.

Q. What did he say in 1905, anything different than the other years? A. Well, first off he simply said that he had to go down to Albany again —

Q. Was the situation any different in 1905 than it was in the other years? A. In respect to which?

Q. In respect to the sugar bounty proposition. A. Yes, sir.

Q. In what respect was it different? A. The bounty law, which paid the sugar factory half a cent a pound, had expired.

Q. Yes. A. And there was no law on the books.

Q. Yes. A. The sugar company in December, 1904, or January, 1905, therefore, in putting out its contracts to farmers made a proviso in those contracts that the price of \$5 which was there mentioned was to be paid the farmer conditioned upon the continuation of a bounty law by the State of New York.

Q. This was a critical year for the company, was it not? A. It was.

Q. If the policy of the State was not renewed by a new act for the payment of a bounty, the chances were that the sugar business would cease, would it not, the beet sugar business? A. There was a possibility of that, Judge Bruce.

Q. Wasn't there a very grave probability of it? A. That is very hard to say, because it depends upon so many things, the price of sugar, the size of crop, which no man can judge in advance.

Q. Did you feel that farmers could afford to raise beets at the price you could afford to pay, and that the company could continue if the State did not pay a bounty? A. If the company had a good sized crop and a good percentage of sugar in the beet it could succeed.

Q. Would the average sized crop and the average percentage of sugar in the beet make it able for it to continue without a bounty? A. You mean the average of the years that the factories had been operated up to that time?

Q. Yes. A. Barely.

Q. Isn't it a fact, Mr. Stigelwald, as Mr. Zimmerlin has testified, that you and he and the other persons interested in the business up there in 1905 had talked the matter over and made up your minds that you were in a very critical situation, and that unless the State continued its policy, this payment, that very serious losses would come to the company? A. No.

Q. It was not? A. No, nothing as serious as that, sir.

Q. Well, that it would be a very serious set back to the industry and the company, unless the State renewed this policy? A. Yes.

Q. What did you decide would have to be done, anything more than had been done in previous years in order to get a bill through? A. We naturally tried to have some kind of a bounty bill passed.

Q. And you, at Mr. Zimmerlin's solicitation, retained him to go down again to Albany? A. Yes.

Q. What did he report back from time to time during the year 1905? A. I believe that before the commencement of the year 1905 the matter had been talked over with Senator Raines.

Q. By whom? A. By Mr. Zimmerlin.

Q. At whose suggestion? A. At his own.

Q. Were you cognizant of it? A. I was.

Q. Had you discussed with him the advisability of his seeing Senator Raines prior to the convening of the Legislature and going over the matters? A. If that is equivalent to his discussing it with me, yes.

Q. And did he go to see Senator Raines at your suggestion? A. At his own, I said.

Q. With your approval? A. Yes, sir.

Q. Then, after you and he had talked it over, with your approval he went to see Senator Raines? A. Yes, sir.

Q. Do you recall about what time of year this was, how long before the convening of the Legislature? A. It must have been in the fall of 1904.

Q. What was he to say to Senator Raines? A. To get his ideas of what could be done in regard to getting a bounty bill through.

Q. Did he go and see the Senator? A. Yes.

Q. Did he report back to you? A. Yes.

Q. What did he say? A. He reported that the Senator thought some kind of a bounty bill would probably go through.

Q. Was that all? A. Eventually the matter took shape in this way, that a suggestion was made, I don't know by whom, that a bounty be paid per ton on beets.

Q. To whom? A. To the farmer or his assigns.

Q. Well, now, who made the suggestion that the policy to whom the money should be paid should be changed from the manufacturer of sugar in the first instance to the farmer? A. That I do not know.

Q. Was that your suggestion, Mr. Zimmerlin's suggestion, or Senator Raines' suggestion? A. I suppose it was the combined judgment of the whole.

Q. Well, I know, but who initiated it. A. I don't remember.

Q. Do you think the manufacturers of sugar, yourself and others, initiated it, and suggested to Senator Raines that the payment ought to go to the farmer, or do you think he suggested it to you people, that if you were going to get a bill through there might be enough votes to carry it through, but that you had better make the payment to the farmer? A. The farmer was never intended to get the bounty.

Q. I presume that is true, and he never got it, did he? A. He never got it.

Q. I think that was probably true. Then who do you think first suggested that on the face of it it would appear as though the bounty was going to the farmer? A. There was no intention of making it appear on the face of it that it was going to the farmer.

Q. Prior to that time the provision of every bill had been for either a bounty on beets at one cent or one-half a cent a pound on sugar to be manufactured? A. Yea.

Q. And by the act of 1905 it provided that the farmer was to be paid one dollar a ton — A. Or his assigns, the same thing as before.

Q. But why not put it in this bill the same as in the previous bill; why this change of one dollar a ton to the farmer or his assigns; why didn't you leave it just as it was before? A. As I said, it was the combined judgment of the whole that a change should be made.

Q. But why the change? A. I do not recollect, sir.

Q. There must have been some reason you approved of it? A. No doubt.

Q. Why did you approve of it? A. Because it looked good enough to me.

Q. To whom did you think it would look good, to the farmers, wasn't it, throughout the State? A. It made no difference to the farmers.

Q. I appreciate that, that is very true; it was all arranged that it would not make any difference to him. A. They got theirs afterwards.

Q. But whose suggestion was it that it read on the face of it that it should go to the farmer or his assigns, and not the manufacturer? A. I am sure that no farmer ever believed he was getting a dollar more for his beets.

Q. You know this bill was not to be passed by the vote of your Senator and your Assemblymen; you had to get a majority of all the Assemblymen and a majority of all the Senators? A. Every term; that was so with every bill.

Q. That is correct, and consequently, what impression was to be produced upon the minds of the farmers outside of the beet sugar industry, the members of the State Grange for instance,

and of the farmers down on Manhattan Island, as to who was going to get the money? A. Not the ones you have in mind.

Q. Did Mr. Zimmerlin go out to see the State Grange at your suggestion? A. Yes, sir.

Q. Its annual meeting was held at Olean, as he has testified, was it not? A. That season, yes, sir.

Q. And he has testified that he went out there and he stated to the farmers—— A. I beg your pardon; you have got in there that he went at my suggestion.

Q. Did he? A. No, sir.

Q. Did he go with your knowledge? A. He did.

Q. With your approval? A. He did.

Q. With your consent? A. That is right.

Q. Let us be extremely accurate about it. I hope you will be as accurate as anyone else. He went there with your knowledge and your approval? A. Yes, sir.

Q. Paid by you to go? A. Yes, sir.

Q. It would be almost as forceful as if you had suggested it? A. Perhaps.

Q. When he went out to Olean and met the State Grange, he went there for what purpose? A. To get the support of the State Grange to a bounty bill in the shape that it was finally enacted.

Q. That is, that the payment be made to the farmer or his assigns? A. Yes, sir.

Q. Does that refresh your recollection any with regard to why you thought it wise to make this change of payment from the manufacturer to the farmer or his assigns? A. No, sir.

Q. It does not? A. No, sir.

Q. That is the form the bill took, did it not? A. It did.

Q. And it received the approval of the State Grange, did it not? A. So far as I recollect, yes.

Q. Do you remember who introduced the bill? A. I do not.

Q. In the Assembly? A. No; pardon me, your Mr. Hurrell has told me day before yesterday that Ad. Smith introduced the bill.

Q. He was the member of the Assembly from Wayne county for 1905? A. Ad. Smith, you said.

Q. Yes, do you recall now? A. I do.

Q. Was Mr. Smith the member of Assembly? A. Yes.

Q. From Wayne county? A. Yes.

Q. And did he introduce a bill in the Assembly? A. Your Mr. Hurrell —

Q. Just wait; I am not asking you that. A. I do not know that of my recollection, except I have been told that.

Q. That is all I wish you to say, you don't recollect; you don't know? A. No, sir.

Q. You do not know who was the member from Wayne county that year? A. I know now.

Q. Of your own knowledge? A. It is now my own knowledge because I believe what I have been told is right.

Q. We don't want anyone here swearing on somebody else's belief. Is it your present recollection that Mr. Smith was a member of the Assembly from Wayne county during 1905? A. It is.

Q. Is it your present recollection that Mr. Smith introduced the bill in the Assembly? A. Yes, sir.

Q. Do you know when he introduced it? A. Your Mr. Hurrell said — February 24, 1905.

Q. Is that your recollection? A. As I got it from him; I have no recollection of it until the day before yesterday.

Q. That is right, when you have no recollection of a matter state you have no recollection; you do not know when the bill was introduced; is that correct? A. You asked me at the present time. My recollection to-day is different than it was two days ago.

Q. I want your recollection now and not two days ago; what is your recollection now? A. My recollection is February 24, 1905, or thereabouts.

Q. Did you talk with Mr. Smith about the bill? A. I did not.

Q. Did Mr. Zimmerlin talk with him to your knowledge? A. I don't know.

Q. Who introduced the bill in the Senate, do you know? A. You will have to excuse me if I repeat the same thing over again; it is only according to information I got.

Q. Do you know now? A. I know.

Q. Who did introduce it? A. Senator Raines.

Q. Do you know — did Mr. Zimmerlin report to you from time to time after the bill was introduced in the Assembly as to its progress? A. Likely.

Q. Is it your present recollection that he at that time stated to you that as late as the 26th of April of that year that the bill had not been reported by the committee in the Assembly to which it was referred; in other words, that it had made no progress? A. I do not recollect that, Judge.

Q. Do you recall that the bill was introduced in the Senate by Senator Raines shortly before the adjournment of the Legislature? A. From what I have heard here, yes.

Q. Did Mr. Zimmerlin come back to you and tell you anything with reference to the gravity of the situation; that the session was nearing its close and that the bills had not moved? A. I would know that myself, Judge Bruce.

Q. Did you know it at the time? A. I did.

Q. Well now, what did you and he talk with reference to what ought to be done? A. What ought to be done was, he ought to see what he could do to get the bill moving.

Q. What was said by you or by him as to what he ought to do to move the bill? A. Nothing in particular.

Q. Did he state to you that it would be necessary to make any promise or to pay any money for the purpose of moving the bill? A. He did not speak of any promise.

Q. Did he say to you at any time that it would be necessary to give any assurances to anyone that the company would show its appreciation in the event the bill moved, went through? A. He did not.

Q. Did he state to you that he was going to give assurances to anyone that the company would show its appreciation if the bill went through? A. He did not.

Q. Did he state to you that he had said to Senator Raines that if the bill became a law that the company would show its appreciation? A. He did not.

Q. Did he state to you that he had had a conversation with Senator Raines in regard to the matter? A. Yes, sir.

Q. What did he say he had told the Senator? A. He said that

he had told the Senator that if the bill went through the company ought to show its appreciation.

Q. Did he state to you that he had had a conversation with anyone else than Senator Raines in regard to it? A. He did not.

Q. Did he say that he had had a conversation with Mr. Burnett? A. He did not.

Q. At that time did he suggest in what way the company ought to show its appreciation? A. Not that I remember.

Q. Now, do you recall the time of the passage of the bill? A. As I heard here, early May.

Q. Prior to hearing the testimony here did you recall the time of the passage of the bill? A. I did not.

Q. You heard here that the bill passed before the Legislature adjourned? A. Yes, I did.

Q. Did Mr. Zimmerlin on his return to Lyons after the adjournment of the Legislature talk with you in regard to the matter? A. After the adjournment of the Legislature?

Q. Yes. A. Yes, he did.

Q. And what did he say? A. He had before that communicated with me.

Q. In what way? A. He had either called me on the telephone or telegraphed me the day the bill passed.

Q. And what did he say, anything further than that the bill had passed? A. I believe he said that he ought to be in a position to show the Senator his appreciation for his assistance in the matter.

Q. Did he mention how strong his appreciation ought to be? A. Yes, he did.

Q. How strong did he say it ought to be? A. Three thousand dollars.

Q. What did you reply? A. I said, "All right, Zimmerlin, if that is your judgment I will see that you get it."

Q. And what did you do? A. I drew a check, my own personal check, on the bank in New York, the one that I could not find, that I have here (producing check); Mr. Multer cashed that check; the money went up to Albany and was by Mr. Multer given to Mr. Zimmerlin.

Q. Now, this check was drawn by you on the Colonial Trust

Co. May 14, 1905, "Pay to the order of"—— A. Pardon me. is that May 4 or May 14?

Q. The 4th, pardon me—— A. I took it also as the 14th.

Q. I will read the whole check: "No. 1. New York, May 4, 1905. Colonial Trust Company, St. Paul Building. Pay to the order of L. H. Multer three thousand no/hundredths dollars (\$3000.00)." Signed by yourself, "Fred Steigerwald," and endorsed, "L. H. Multer." He must have cashed it, it was cashed by him or at least it bears the endorsement. "Pay to the order of the Phoenix National Bank, New York City," is that right? A. Yes, sir.

Q. Thomas Maclay & Co.? A. Yes, sir.

Q. Then he must have cashed it through Thomas Maclay & Co.? A. That is my supposition.

Judge Bruce: I ask that the check be marked in evidence.

(Admitted and marked Exhibit No. 36.)

Q. What is your recollection, refreshed by this voucher, as to when Mr. Steigerwald telephoned you or communicated with you? A. You mean Mr. Zimmerlin?

Q. Mr. Zimmerlin; correct that. A. As I said before, Judge Bruce, I believe that I was either telephoned or telegraphed to by him when the bill was passed.

Q. Which would be the same date, as the evidence shows here as the date of the check, May 4? A. I believe that was the date.

Q. And where were you at that time? A. At Lyons.

Q. And there is where you drew this check? A. Yes, sir.

Q. And delivered it to Mr. Multer? A. I did.

Q. Do you know what Mr. Multer did? A. I believe Mr. Multer went to New York to cash the check, as is here evidenced.

Q. Do you know of your own knowledge or did he say where he paid the money to Mr. Zimmerlin, or delivered it rather, to Mr. Zimmerlin? A. Not of my own knowledge, no.

Q. Did Mr. Multer tell you where he delivered it to him? A. Not that I remember.

Q. But likely—— A. But likely he did.

Q. Would it be your recollection that he delivered it to him at Lyons or in Albany? A. I believe in Albany.

Q. In Albany? A. I believe in Albany.

Q. Now, this was in the year 1905? A. It was.

Q. Did you pay Mr. Zimmerlin any other moneys during that year? A. Yes, sir, he had plenty of money.

Q. Do you remember the amounts that you paid him during the year 1905? A. Let me get my own little statement, sir.

Q. Yes. A. I think you have the whole of it there; is it necessary to repeat it all?

Q. Could you give me the total amount that you paid him in 1905? A. With my own personal checks, you mean?

Q. First, your own personal checks. A. \$7,149.90. I beg your pardon, I must correct that, \$7,100.

Q. \$7,100? A. Yes, sir.

Q. And was that all given to him at one time? A. No.

Q. Have you the dates on which it was given to him, and the amounts? A. I have all those dates except one item of \$1,500.

Q. Give me the ones you have. A. Included in this \$7,100 are those two checks of the year 1904, which you showed me before.

Q. Aggregating \$750? A. No, \$550; those two checks of \$550; one for \$300 and one for \$250.

Q. You are correct. A. I leave out those two.

Q. Including those two? A. Including those two it is \$7,100; and the dates, do you wish the dates?

Q. Yes. A. On the 4th of March, 1904, \$300; on the 3rd of October, 1904, \$250; on the 19th of April, 1905, \$500; on the 29th of April, 1905, \$300; on the 4th of May, 1905, \$3,000, this check I gave you; on the 8th of June, 1905, \$750, and on the 5th of June, 1905, again, \$500. I have missing \$1,500, as you will notice, for which I have not yet been able to find the voucher.

Q. Do you have any present recollection in regard to the payment of the \$1,500? A. I should judge, it is just a judgment that it was given, as are these other things, in small amounts; that that \$1,500 constitutes two or three small checks.

Q. But it was given to him during the year 1905, was it? A. Yes, sir, prior to this entry under date of June 24th.

Q. From the figures you have given me, including your check which you say you have not the voucher for, but which you have

a recollection of, how much did you give him in 1905 alone, that would be excluding the \$550? A. \$6,550.

Q. Now, these are for your personal checks? A. Yes.

Q. Now it appears from the books of the company that a charge is made to him on June 24, 1905, of \$7,174.90? A. Yes, sir.

Q. How much of this \$6,550 is included in the \$7,174.90? A. All of it.

Q. Now, in addition to that, it appears from the books of the company that on March 9th, 1905, he received \$100; on April 8th, 1905, \$39; on April 10th, 1905, \$75; on April 25th, 1905, \$115; and on May 1st, 1905, \$100. A. That is correct.

Q. Which would make a total of \$6,979, would it not? A. Yes, sir.

Q. Now, Mr. Steigerwald, what did Mr. Zimmerlin say that he needed this money for in addition to the \$3,000, and in addition to his expenses and compensation that year? A. He did not say anything.

Q. Did he ever say anything to you about any payment to Mr. Burnett? A. He never did.

Q. He never reported that payment? A. He never did.

Q. Well, did you assume that all of this money paid to him in 1905 over and above the \$3,000 was to go to him for his personal expenses and compensation? A. I didn't give that matter any thought.

Q. Did you make any inquiry of him? A. I never did.

Q. That is, you left it to his judgment to make such disbursements as he thought was necessary? A. When he called for the money, I gave him the money, I suppose.

Q. Without inquiring? A. Without inquiring as to what he wanted it for.

Q. Well now, did you have in mind at the time — you must have had something in mind — that he was going to put all this in his pocket, and that he possibly had found it necessary to use it in such a way as he saw fit in order to secure the enactment of the law? A. I had nothing in my mind as to what he wanted it for.

Q. I am not asking if you had anything definite in mind as

to whom it was to go to. Did you have in mind that it was to go to him personally and solely? A. I don't recollect, sir.

Q. Well now, Mr. Steigerwald, you are a careful business man, are you not? You are guarding the interests of the company in which you were an officer and a large stockholder? A. I was a large stockholder, yes.

Q. You were not paying Zimmerlin, who volunteered these services, any such compensation as that, were you, for what he had done? A. He had large expenses — I appreciated that, and if he had kept a thousand or two thousand dollars of the money, I would have been satisfied.

Q. Yes, but you would not expect him to have kept all the difference between what he paid Senator Raines and what you paid him, would you? A. There is a difference of about \$4,000.

Q. You did not expect he would keep that? A. If he had a couple of thousand dollars expenses, and kept a couple of thousand dollars, that was good enough for me.

Q. You did not inquire what his expenses were? A. No, sir, I never did.

Q. Nor what his disbursements were? A. No, sir.

Q. Nor did you care? A. No, sir.

Q. Now, let us come down to the year 1906. A. Yes, sir.

Q. That is the following year? A. Yes, sir.

Q. What happened that year in regard to his services in Albany, how were they, first? A. It passed off about the same as the year before.

Q. Did he volunteer then? A. He did.

Q. What did he report from time to time during the year 1906? A. There was very little that year, excepting to tell me once in a while where the appropriation bill stood.

Q. Well, it appears from the books of the company that the company paid him \$1,863.90 during the year 1906. How much did you pay him in addition to your personal account? A. Where is that \$1,800, please? Not a cent my personal account, because my personal account is already in there.

Q. Then you did not pay him, in addition to the amounts indicated on the books of the company, anything from your personal account in 1906? A. No.

Q. What did he say he had to do in 1906 to get the bill through, if anything? A. Judge Bruce, will you permit me, before we pass by that point —

Q. Yes. A. You have three checks there which you have brought here, in evidence, before, and nobody has been able to tell you what those checks were for.

Q. Yes. A. In the year 1906, you have a charge against Zimmerlin which is in connection with part of that. You have got a charge here of \$756.30, or whatever it is on your statement.

Q. Yes, \$756.30. A. That constitutes the repayment to me by the sugar company, of \$750 of those checks.

Q. You mean, the three checks that I hold in my hand? A. Out of those three checks, two of them, I think, aggregate \$750. Is that right?

Q. Yes. A. That was repaid to me. That was at that time a loan made to Zimmerlin by me upon a note of his, which I carried, and then got it back from the sugar company in 1906, in this item of \$756, considering it part of his compensation.

Q. What was this note made for? A. \$750.

Q. And when he made the note, you let him have the money. did you? A. I did.

Q. Why did you draw two checks on the same day on the Colonial Trust Company, dated the same date, one for \$250, and one for \$500? A. Because he asked me for it.

Q. Did he explain why he wished it that way? A. No, I don't believe — he may have. Pardon me, he must have. He must have said, now, I would like to have two checks. But besides that I have no recollection that he said anything more.

Q. Did he say what he was going to do with the money? A. No, he did not.

Q. Did he say who he was going to give it to? A. I had no idea he was going to give it to anybody. He kept it himself.

Q. If he was going to keep it himself, why did he want two checks of the same date, different amounts, and it seems that he cashed them at different banks? A. No, I think it is cashed at the same bank. These are suppositions that we are talking about.

Q. Please look at the endorsement on the back of the check. A. I will have to use my glasses again. Where is that other one?

Q. Do you know why he did that? A. No.

Q. Did he state to you why? A. Not that I recollect.

Q. I show you a draft drawn on your private account with the Colonial Trust Company — personal account, rather, \$500, July 5th, 1905. Do you recall what that was for? A. Yes, that was for the same sort of business. He was very much in need of money at the time.

Q. Did he say why he needed the money? A. No. Zimmerlin needed money quite often.

Q. Did he say what he was going to do with the money? A. No.

Q. You will notice there — A. Not that I remember.

Q. You notice that was cashed at the bank in Wayne, other than the one with which he did business? A. Yes.

Q. Did he mention anything to you in regard to it? A. Why he did that?

Q. Yes. A. Because, I did not know, Judge Bruce, that he would do that, until the check came back to me.

Q. Did he say what he was going to do with that \$500? A. No, except that he needed it.

Q. Did he say for what purpose? A. No, not that I remember.

Q. Don't you think you would remember? A. I think I would.

Q. Did he say it was to go to a member of the Legislature? A. Certainly not, that I remember.

Q. Did he say it was to go to any employee of the Legislature? A. Certainly not.

Q. He has testified here that in 1905 he paid Mr. Betts. You know Mr. Betts? A. I do.

Q. \$300? A. Yes.

Q. Receiving the money from the company? A. Yes.

Q. Did you give him that money? A. I certainly did not give it to him, except my signature is necessary to any check of the company, to make it valid.

Q. Did you know of that payment to Mr. Betts? A. I did not.

Q. Did he state to you at any time that he was going to pay Mr. Betts? A. Not that I remember.

Q. Would not you remember a matter of that kind? A. Yes, probably I would.

Q. Did he state to you afterwards that he had paid Mr. Betts?
A. No, he did not.

Q. Did not you know that Mr. Betts was receiving \$300 for his services? A. No, not that I remember.

Q. Not that you remember. That is a circumstance that could not escape your memory? A. Nevertheless, I don't remember it.

Q. Mr. Betts resided there in Lyons? A. Yes, sir.

Q. You knew he was an employee of the Assembly? A. I cared nothing about legislative matters at that time.

Q. It seems to me that you was caring a great deal about it, and very deeply interested in it. Did not you know that in 1905 Mr. Betts was paid \$300 for his services? A. No, sir, I did not.

Q. Did Mr. Zimmerlin ever tell you that? A. Not that I remember.

Q. Well, he says he paid him \$250 in 1906. A. You will have to take his word for it.

Q. Did you know that? A. I do not.

Q. Did you know that at the time? A. Not that I remember.

Q. Well, would you not have remembered that if you had known that? A. That I can't tell you.

Q. Well, we come down to 1906. You have given the amount you paid to Mr. Zimmerlin during 1906. Did you hear Mr. Zimmerlin's testimony? A. I did, sir.

Q. Did you hear him testify that in the month of July, 1906, he made a journey to Canandaigua, and at the office of Senator Raines paid him \$3,000 in currency? A. Yes, sir.

Q. Did you know of that transaction? A. I do.

Q. Give us all you know about it. A. He came to me and says, "it's about time that you show your appreciation to the Senator."

Q. Now, you are speaking of 1906? A. I am. He probably came to me a couple of times before I opened up.

Q. You mean "opened up," or "gave up?" A. You can take your choice. Eventually I said, "All right, Zimmerlin, I give you my check." And, here is that check.

Q. (Reading.) "No. 983, New York, July 26th, 1906. New York Produce Exchange Bank through the New York Clearing House, Pay to the Order of H. F. Zimmerlin, Three thousand

dollars (\$3,000), signed by Fred Steigerwald, and endorsed on the back, H. F. Zimmerlin. Cashed at the Bank of Wayne, Lyons, New York, and endorsed 'Payment received July 26th, 1906, by the Consolidated National Bank.'"

(Said check is marked in evidence as Exhibit No. 37.)

Q. So it must have been cashed on the same day, was it not, cashed upon the same day, was it not? A. Yes, apparently.

Q. Where were you when you delivered that to him? A. In Lyons.

Q. At your office, or his? A. At my own.

Q. You mean the office of the company in the village of Lyons? A. I call it my own personal office.

Q. What other conversation was there between you and Mr. Zimmerlin in regard to the payment of funds at this time? A. None.

Q. Did he say he was going to pay anyone else? A. No.

Q. When did you next see him? A. I could not recollect. If you mean to ask if he reported to me, he did not.

Q. He did not? A. No, sir.

Q. Did you ever inquire whether or not he made the payment to Senator Raines? A. In no case did I ever inquire about that.

Q. Simply gave him the money and forgot it? A. That is about the size of it, sir.

Q. Well now, did he ask you for money for payment to any other member of the Legislature or employee thereof, in 1906? A. Not that I remember.

Q. Coming down to the year 1907, what is your recollection as to what happened that year with reference to payment of money to the members of the Legislature? A. To legislators?

Q. Yes. A. Just the same thing as to Senator Raines.

Q. Well, was he employed by your company to represent it in the Legislature of 1907? A. Was who, please?

Q. Mr. Zimmerlin? A. He was.

Q. Did you suggest his services, or did he tender them? A. It took the same course as the year before.

Q. Do you remember the amount of the appropriation in the year 1907? A. I do not.

Q. Why did he say to you in 1907 with reference to the necessity of making any payments in order to secure the passage of the bill? A. Nothing in particular.

Q. Did he say to you that he thought he ought to assure Senator Raines that in the event the appropriation was made, the company ought to show its appreciation? A. He certainly did not.

Q. Tell us all the facts in regard to the giving of the money to him by you in 1907, for a payment to Senator Raines or anyone else. A. The facts are, as the checks are there in your files, dated according to my figures and according to my statement here, September 17th, for \$3,000, drawn by the Sugar Company, which I presume was cashed, and the cash was handled, I presume, in the same manner as the year before.

Q. Did you draw this check? A. If you will let me see the checks, then I can answer.

Q. From the books of the company — A. Pardon me. You have refreshed my memory. I beg your pardon. It is different.

Q. In what way different? A. It was currency. It was currency taken out of the Bank of Wayne under that date of September 17th, sent directly into the account of the Sugar Company, and given by the Bank of Wayne to Mr. Zimmerlin.

Q. How was the currency drawn out of the bank? A. Do you mean, in what denominations?

Q. In what manner? A. Simply handed over.

Q. Did not you have to present at the bank a check? A. No.

Q. You simply went to the bank and requested the currency? A. I simply told the bank to let Mr. Zimmerlin have \$3,000.

Q. Was not there any voucher given the bank? A. No, sir.

Q. Just your word passed across the counter? A. That's enough.

Q. Well, was Mr. Zimmerlin with you? A. He was not.

Q. Did he call to get the money? A. No.

Q. Was the money given to you? A. No, to him.

Q. In what way? A. Well, later in the day the bank gave him the money.

Q. Well, did he call at the bank to receive it, or did they send it to him? A. That I don't know, sir.

Q. What did he say he was going to do with this money? A. Well, as I have said before — I believe I have explained that to you — that he wanted the Senator remembered again, the same as before.

Q. Did he report to you what he did with the money? A. He did not.

Q. Did you inquire of him? A. I did not.

Q. You will notice that on August 19th, 1907, he received \$1,000? A. Yes.

Q. What was the circumstance of that payment? A. Why, that, I think, was simply a loan to him.

Q. By whom, you or the company? A. I can't trace that out, Judge Bruce. I wish Multer was here. He could tell you that.

Q. Where is he? A. He has gone. You let him go yesterday.

Q. No, we did not let him go yesterday. All of the witnesses were requested to report this morning without further subpoena. A. I thought you were through with him, so he went to Lyons yesterday.

Q. Well, he may report again. A. In good faith, he did that.

Q. I have no doubt of that. This \$1,000, was it a loan to him for his personal use, or in connection with legislation? A. For his personal use.

Q. Did he pay it? A. Yes.

Q. When? A. By services.

Q. Then it was a payment to him, or an advance, was it? A. I can't say even that much, sir. It might have been that it was for services which he had already rendered.

Q. How much did he receive, all told, during the year 1907; Mr. Multer testified \$4,917.50, so the books of the company show. Now, did you pay him anything by your personal check? A. I did not, nothing outside of what you have on there.

Q. On November 27th, 1907, it appears by the books of the company that he received \$522.50. A. Yes.

Q. What is that for? A. That is your other \$500 check. You've got the third one of the three.

Q. Why these payments made to him so late as November 27th, 1907? A. Why, that ought to be evidence that it was not made for any legislative purpose.

Q. Was it made as a contribution to any campaign of any member of the Legislature? A. It was not.

Q. It seems from time to time he received his expenses. After the introduction of the bill he received this thousand dollars which you say was for services, either rendered or to be rendered. Why this payment of \$522.50? A. That was not a payment on that date, Judge Bruce. Perhaps I have not made myself plain. That was a payment for that check you have.

Q. Drawn on the Colonial Trust? A. No, one of these two checks here in July or August, 1905.

Q. Why were these payments of 1905 not charged against him until November 27th, 1907? A. Because I carried them against him.

Q. Did you carry any other funds against him, as you call it? A. I have carried his notes many times.

Q. For funds to be used for his personal purposes? A. For his personal purposes.

Q. Well, you received these funds from the company, did you not? A. I then got credit from the company for the five hundred dollars which I had paid him two years ago — almost two years ago.

Q. Why were the company paying his loans? A. The company was just paying his services, and not his loans.

Q. Oh, these were his services, then? A. His services.

(Another check is marked in evidence as Exhibit 38.)

Q. Now, referring to Exhibit 38, which is the check for the \$3,000 dated July 26th, 1906, you said that that does not appear upon the books of the company. A. Well, I am not a bookkeeper, but I think I can explain it to you. It does not appear on the books of the company, but the gentleman who drew up that statement that you have has not copied it. I understand from Mr. Multer — whom you requested, I believe, to refresh his memory as to why there was no charge of that kind in 1906, and he thought the matter over, and he is positive that there is an entry.

Q. Well, it is unfortunate that he is called home. A. Well, it is not in one of these books, Judge Bruce. He has looked for it. It is in another book.

Q. He said these were the cash books of the company, and that they showed all the receipts and disbursements of the company. Why not in here? A. There must be another book, which it is customary to enter things into.

Q. He said not. I showed him these two books, and he said they were the cash books of the company. A. Well, I am trying to give you the facts of the case. Now, I can argue out why it is not in here.

Q. Did you have anything to do with the keeping of the books? A. Nothing at all.

Q. Did you examine the books from time to time? A. No, sir.

Q. Do you know the method of bookkeeping? A. No, sir, I am not a bookkeeper. Now, that item is in bills payable, charged, as I understand, \$3,000, against expense account, which is this \$3,000.

Q. Have you seen it so entered? A. No, sir.

Q. Then you know nothing about it? A. I am trying to give you an explanation from Mr. Multer.

Q. Do you know the reason why it should not have been entered in the regular cash book of the company at the time? A. I know none; I know nothing about bookkeeping.

Q. Was it for the purpose of obscuring the payment that it was not so entered? A. No, certainly not.

Q. Well, if it was a regular disbursement of the company, it ought to have appeared in the regular books of the company kept in the regular way? A. They are, they are regular books, Judge Bruce.

Q. Mr. Multer did not so testify. I asked him if those were the books of the company, the two cash books and ledger, and he said yes. A. Well, that is none of my business.

Q. Now, coming down to 1908, that was the last year of the appropriation? A. Yes.

Q. How much was paid Mr. Zimmerlin in 1908? Do your figures agree with those Mr. Multer testified to, \$1,485? A. All right.

Q. Now, was any other sums paid him in 1908 out of your personal account? A. No, sir.

Q. Did he receive any other funds, either of yours or of the

company other than those that I have mentioned in 1908? A. None that are not on the books there.

Q. Did he represent the company down at Albany during the session of 1908? A. In the same way as before, sir.

Q. He stated that Governor Hughes, who signed the bill in 1907, attached thereto a memorandum stating that he would sign no further appropriation. If that were true, why was he attending down there in 1908? A. Certainly. You will notice that according to the expense checks which he had, he was down there about three times.

Q. I notice an expense check, February 4th, and March 14th, March 24th, and March 17th? A. Four times, Judge Bruce.

Q. Four times during the session of the Legislature? A. Yes.

Q. One of which was a payment on March 29th, 1908, of \$1,025? A. Yes, sir.

Q. Do you recall what that was for? A. Yes, sir.

Q. What was it for? A. A loan made to Mr. Zimmerlin personally.

Q. For what purpose? A. My own check.

Q. That's true, but what did he wish the money for? A. Needed it.

Q. Did he repay it? A. Yes, sir.

Q. In what way? A. Repaid to me, you mean my own check?

Q. Yes, sir. A. He paid me — charged against the sugar company for his services.

Q. Then that payment to him was for his services and was paid by means of a loan? A. Yes, sir.

Q. What was his services in 1908? A. As I stated, the same as before, to see that the appropriation bill got through, sir. There was no legislation, just an appropriation bill.

Q. That was for the deficiency appropriation of 1907? A. Yes, sir.

Q. There was no appropriation for a campaign in 1908? A. No, sir.

Q. Now, Mr. Steigerwald, what contributions did the Lyons Beet Sugar Company, or other companies you were connected with, make to the campaign funds of political parties or politicians, did your company make during your connection with the company? A. None that I know of.

Q. Could any have been made without your knowledge? A. No.

Q. By the company? A. I don't believe so, sir.

Q. If you had made any, would you not have present recollection of it? A. I think so.

Q. Now, let me ask you the general question, and will you kindly search carefully your memory before you reply? A. Yes, sir.

Q. Were any other payments made by the Lyons Beet Sugar Company or any of the other companies with which you were connected, to any members of the Legislature or any employees thereof, or any other public officer, other than those to which you have testified? A. Not that I know of.

Q. Well, if you had had knowledge of any such payment, would not you now have a present recollection of it? A. I will answer not that I remember.

By Assemblyman COLNE:

Q. Mr. Steigerwald, throughout all your testimony you have said that the company wanted to show its "appreciation," and here in the latter part of your testimony you use the expression that you "opened up"? A. To show my appreciation. That is simply a slang term, and perhaps I should not have used it. I beg your pardon.

By Judge BRUCE:

Q. Now, Mr. Steigerwald, did you hear Mr. Zimmerlin testify yesterday? A. I did.

Q. He testified that when he made the payment to Mr. Burnett in 1905 he paid him not only \$1,500 for his personal use, but he at the same time gave him \$1,500 in addition, stating to him that that was for him to use as he saw fit. Did you hear that? A. I did.

Q. Were you present when that payment was made? A. No, sir.

Q. Were you present at the time any of these payments were made, either to Mr. Burnett or to Senator Raines? A. No, sir.

Q. Then you have no personal knowledge as to how much Mr. Zimmerlin paid Mr. Burnett in 1905? A. I have no personal knowledge what he paid Mr. Burnett or anybody else, sir.

By Senator WAGNER:

Q. I would like to ask you your opinion as to whether or not that was a proper thing to do, to pay money to a legislator for helping to pass legislation? A. Helping to pass legislation? I beg your pardon, sir —

Q. Or to secure legislation? A. It was not paid as I understood it for that purpose. There was no prior understanding or promise that I know of, sir, that either Senator Raines or any of the other gentlemen, as far as I think Mr. Zimmerlin's mind went should have any consideration. That was I believe just as Mr. Zimmerlin —

Q. Well, let us say there wasn't any agreement made beforehand, do you think it is a proper thing to pay a member of the Legislature money for assisting in any way in the passage of legislation? A. I don't think so, and these moneys were not paid for that purpose in my estimation, sir.

Q. What were they paid for? A. As Mr. Zimmerlin has testified and as I look at it as an appreciation, with no understanding that they were entitled to anything.

Q. As an appreciation for services rendered — is that the point? A. No, I would not call it that, sir.

By Judge BRUCE:

Q. Mr. Zimmerlin testified, and so did you, Mr. Steigerwald, that he stated to Senator Raines before the passage of the bill in 1905 that if the bill was passed the company ought to show its appreciation, and he also stated that he reported that to you? A. Yes, sir.

Q. Didn't you consider that in the nature of a promise that if the bill passed the company would show its appreciation? A. I should say not, sir.

Q. Who suggested the amounts that should go to Senator Raines of \$3,000 each year? A. Mr. Zimmerlin.

Q. Did he suggest any year a larger or smaller amount? A. Never any change, sir.

Q. Did you agree with him at once that that would be a proper amount? A. I don't recollect.

Q. Did you ever tell him that there should be more paid or less paid? A. I certainly did not.

Q. Did you haggle with him, or argue with him in regard to the amount to be paid? A. I never did.

Q. Don't you consider that if a representative of your company had stated to Senator Raines that if the bill passed your company ought to show its appreciation, that there was a moral obligation, if there could be any such obligation called moral, resting upon the company to do what you said it ought to do? A. I considered that I had to back up Mr. Zimmerlin in his statements as far as he advised me of them.

Q. And as you approved of it — is that correct? A. Yes, sir.

Q. What was the total amount paid to Mr. Zimmerlin during the years 1905, 1906, 1907 and 1908? A. The total was \$19,259.70.

Chairman MERRITT: I am informed that next Wednesday is a holiday, known as Columbus Day, established in memory of a very distinguished citizen, and that by virtue of that fact the attendance of the city employees will not be available, and therefore we cannot very well sit on Wednesday, so that the Committee will stand adjourned until Thursday, October 13th, 1910, at 11 o'clock A. M.

Adjourned to Thursday, October 13th, 1910, at 11 A. M.

THIRTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL,
New York, October 19, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, ESQ., } *Assistant Counsel*.
ISIDOR J. KEESEL, ESQ., }

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Frank J. Gardner.

Mr. MAX D. STEUER: I should like to be permitted —

Judge BRUCE: There cannot be an interruption when a witness has not taken the oath. I do not know for what purpose the gentleman rises before this Committee, but I presume, —

Mr. MAX D. STEUER: What I desire —

Judge BRUCE: I do not care to have any statement entered upon the record. I would like to know first for what purpose the gentleman appears before the Committee.

Chairman MERRITT: You may note the presence of Mr. Max D. Steuer and Henry J. Goldsmith.

Mr. MAX D. STEUER: My purpose, Mr. Chairman, and

Gentlemen of the Committee, is to request you to hear me on the propriety of swearing Mr. Gardner.

Judge BRUCE: There can be no question as to the propriety of swearing Mr. Gardner. Certainly, a witness who is subpoenaed to attend before the Committee cannot object to obeying the mandate of the Committee, and attending and taking the oath.

Chairman MERRITT: I do not suppose there could be any question about that.

Mr. MAX D. STEUER: I am not making any question about it, Mr. Chairman. I admit, and have told counsel here before the Committee, that Mr. Gardner is here in attendance upon this subpoena, but that it is within the sound discretion of this Committee, if it finds the circumstances warrant it, to decline to swear him. I say to you in advance, that if you find, in your sound discretion, Mr. Gardner will be sworn.

FRANK J. GARDNER called to the stand.

Mr. STEUER: He is not here in defiance of anybody; he is here asking, through his counsel, to have it made clear to the Committee that circumstances exist which would warrant the Committee in declining to swear him.

Chairman MERRITT: Let me say, in reply to that suggestion, it has been the rule always, and is a well established custom of committees of this sort, that persons subpoenaed are not permitted to appear by counsel at all, except the courtesy is given of the notice of their representing the person in question. Now, any statement that Mr. Gardner wants to make, after he is sworn, as to testifying or not, would be appropriately a part of this record. Otherwise, I see no way to proceed.

Mr. MAX D. STEUER: That being the ruling of the Committee, we submit.

FRANK J. GARDNER, called and duly sworn:

Mr. FRANK J. GARDNER: Mr. Chairman, I have prepared a letter embodying the only statement that I shall make before this Committee.

Judge BRUCE: Now, if your honor please, there has no ques-

tion been propounded to the witness; consequently I don't see how the Committee is going to be able to determine whether or not the witness should answer the question.

Chairman MERRITT: I take it the witness will not object to answering questions as to his age, where he lives, and so forth.

Examination by Judge BRUCE:

Q. Where do you reside? A. 20 Wadsworth avenue, New York city.

Q. How long have you resided there?

Mr. GARDNER: I shall at this time decline to answer any and all questions upon the ground that the information elicited may tend to incriminate or degrade me.

Q. How long have you resided at 20 Wadsworth avenue, New York city? (No answer.)

Judge BRUCE: I ask the Committee to direct the witness to answer the question.

Chairman MERRITT (to witness): What is your answer, Mr. Gardner; the same as your previous one?

Mr. GARDNER: I might just as well state to the Committee now that I have answered the only question I will, in the way I have answered.

Chairman MERRITT: At this time?

Mr. GARDNER: At any time.

Chairman MERRITT: At any time?

Mr. GARDNER: And I should like, too, to call the Committee's attention to this, that it is useless for counsel to this Committee to harass me by questions, because I have already declined, and I will not answer any and all questions, for the reasons stated.

Q. Do you decline to answer the question propounded, Senator; do you decline to answer this question? (No answer.)

Q. Where did you reside prior to your residing at No. 20 Wadsworth avenue, New York city? (No answer.)

Q. Do you decline to answer the question, Senator? (No answer.)

Q. Will you state whether or not you decline to answer it? (No answer.)

Q. Have you ever held public office? (No answer.)

Judge BRUCE: I presume the record notes that the witness does not answer.

Q. Have you ever held public office, Senator? (No answer.)

Q. Were you in Albany during the session of the Legislature of 1908? (No answer.)

Q. Did you know, during that session of the Legislature, of an act pending before that Legislature of 1908, which was entitled, "An Act to amend section 351 of the Penal Code, relating to pool-selling, bookmaking, bets and wagers?" (No answer.)

Q. Were you retained or employed by any person, or persons, by any corporation or corporations, for the purpose of endeavoring to prevent the passage of this act? (No answer.)

Q. Did you have any conversation with any member of either house of the Legislature of 1908, during either its regular session or special session thereafter called, relative to the passage of this act? (No answer.)

Q. Did you pay, or offer to pay, to any member of either house of the Legislature, during the regular session of 1908, or the special session thereafter called, any sum of money, or other thing of value, for the purpose of inducing them to vote in opposition to the passage of this bill, or to withhold their vote in favor of the passage of the bill? (No answer.)

Q. Did you pay, or offer to pay, any sum of money or other thing of value, to any member of the Legislature of either house thereof, of 1908, during the regular session, or during the special session thereafter called, for the purpose of influencing their action upon the bill which I have mentioned, and for the purpose of inducing them to vote for the bill or against the bill, or to withhold voting whatsoever, other than Otto G. Foelker, Senator representing the Fourth Senatorial District of the State of New York? (No answer.)

Judge BRUCE: Mr. Chairman, I ask that the Committee direct the witness to answer the last question which was propounded to the witness, and that his attention be called to the fact that for his failure to answer this question, he will be in contempt of the Legislature of the State of New York.

Chairman MERRITT: The Committee so directs the witness.

The witness, of course, understands, being a man of experience in these matters, that he is putting himself in contempt of the Legislature, I take it.

Judge BRUCE: I ask that the Committee to direct the witness to answer each of the other questions propounded to him by counsel, and that the same admonition be given to witness.

Chairman MERRITT: The Committee so directs the witness, on each and every of the questions asked by counsel, with the same comment.

Q. Are you acquainted with Otto G. Foelker, who formerly represented the Fourth Senatorial District in the Senate of the State of New York during the session of 1908? (No answer.)

Judge BRUCE: I ask that the Committee give the same direction to the witness with reference to answering this question that was given with reference to answering former questions.

Chairman MERRITT: The Committee so directs the witness to answer.

Q. Are you a member of the Bar of the State of New York? (No answer.)

Q. Are you an attorney and counsellor at law, duly admitted to practice in the courts of the State of New York? (No answer.)

Q. Are you married? (No answer.)

Q. What is your age? (No answer.)

Judge BRUCE: I ask that the Committee direct the witness to answer the last question, and each of the questions I have propounded to him since the last direction was given by the Committee.

Chairman MERRITT: The Committee so directs the witness to answer.

Judge BRUCE: And that he also be instructed that for failing to answer he will be in contempt of the Legislature of the State of New York, and amenable to the provision of the Penal Code in such cases made and provided.

Chairman MERRITT: The Committee calls the witness' attention to the facts as stated by counsel.

Q. Do you know Thomas Maxwell? (No answer.)

Q. Do you know Floyd Adams? (No answer.)

Q. Do you know Charles Hyde? (No answer.)

Judge BRUCE: I ask that the same directions be given to witness.

Chairman MERRITT: The Committee so directs the witness to answer.

(Here the witness left the stand and had a consultation with his attorneys, after which he resumes the stand and made the following statement:)

The WITNESS: I desire to state to the Committee that my age is 41, that I am married, and that I decline to answer any and every other question upon the ground stated.

Judge BRUCE: It seems useless, Mr. Chairman, to proceed further with the examination of the witness, in view of his refusal to answer, and I feel that the questions already propounded upon the record are sufficient to show that the witness is in contempt of the Legislature in refusing to obey the directions of the Committee. That is all, sir.

Chairman MERRITT: The Committee will take the matter under consideration, Judge.

OTTO G. FOELKER, called as a witness, being duly sworn, testified as follows:

Examined by Judge BRUCE:

Q. Where do you reside? A. 144 Keep street, Borough of Brooklyn, State of New York.

Q. How long have you resided there? A. Since last July.

Q. Where did you reside prior to your residence at that place? A. At 86 Taylor street.

Q. How long did you reside there? A. I just cannot say how long.

Q. How long have you resided in the Borough of Brooklyn? A. I came to the Borough of Brooklyn in December, 1895.

Q. And ever since that time you have resided in the Borough of Brooklyn? A. Yes.

Q. Where did you reside during the year 1908? A. At 145 Rutledge street, Borough of Brooklyn, city of New York.

Q. What is your business? A. Attorney and counselor at law.

Q. When were you admitted to practice? A. January, 1908.

Q. Where are your offices? A. 38 Park Row, Borough of Manhattan, city of New York.

Q. Have your offices always been in the Borough of Manhattan?
A. They have.

Q. Have you ever held public office? A. I have.

Q. What offices have you held? A. I was a member of the Assembly in 1904; re-elected in 1905; elected to the Senate in 1906. I held that office until, I believe, October, 1908, when I resigned. Was elected as member of Congress in November, 1908, and I am now a member of Congress.

Q. Representing what district? A. The Third district, State of New York.

Q. What district did you represent in the Assembly? A. The Fourth district.

Q. Of Kings? A. Kings county.

Q. And what district did you represent in the Senate? A. The Fourth. I beg pardon?

Q. In the Senate? A. The Fourth district.

Q. Of the State of New York? A. Of the State of New York; the Fourth Assembly District in the State of New York.

Chairman MERRITT: In the Senate?

The WITNESS: And the Fourth in the Senate, yes.

Q. Do you recall that during the session of 1908, the regular session — there was during that year a regular session of the Legislature and also a special session, was there not? A. There was.

Q. The regular session convened —

Chairman MERRITT: The Committee would like to have the people who are present here take seats if possible. It interferes with the due process under the circumstances. There are plenty of seats.

Q. Do you recall on what day the session convened in 1908, the regular session? A. I believe it was on the 1st or 2nd of January.

Q. I show you a copy of the Journal of the Senate, State of New York, 131st session, 1908, and ask you if that refreshes your memory that it met on Wednesday, January 1st, 1908? A. It does.

Q. And adjourned on the 23rd day of April, 1908, Thursday?
A. It does.

Q. Subsequent to the adjournment of the regular session the Governor duly convened the Legislature in special session in 1908, did he not? A. He did.

Q. I show you again the Journal, 131st session, 1908, and ask you if that refreshes your memory that the special or extraordinary session convened on Monday, May 11, 1908? A. It does.

Q. And adjourned on Thursday, June 11, 1908? A. Yes, it does.

Q. Do you recall that during the regular session of the Legislature of 1908 there was introduced in the Legislature a bill entitled "An Act to amend section 351 of the Penal Code relating to pool selling, bookmaking, bets and wagers?" A. Yes.

Q. I call your attention to pages 11 and 12 of the Journal of the 131st session, and ask you if that refreshes your memory that the bill was introduced by Senator Agnew on January 6th, 1908? A. Yes.

Q. As Introductory No. 27 in the Senate? A. Yes.

Q. I call your attention to pages 800 and 801 of the Journal of the regular session of 1908, and ask you if that refreshes your memory that the bill came up on final passage in the session on Wednesday, April 8th? A. Yes, it does.

Q. And I ask you whether or not, again referring to page 801 of the same volume, the votes in the affirmative were as follows: Agnew, Allds, Armstrong, Carpenter, Cobb, Cordts, Davis, Dunn, Fancher, Foelker, Fuller, Gates, Heacock, Hill, Hinman, Hooker, O'Neil, Page, Raines, Saxe, Smith, Taylor, Travis, Tully, White? A. Yes, sir.

Q. Being twenty-five in all in the affirmative? A. Yes.

Q. And in the negative: Ackroyd, Boyce, Burr, Cassidy, Cohalan, Cullen, Emerson, Frawley, Gilchrist, Grady, Grattan, Harte, Hasenflug, Knapp, McCall, McCarren, McManus, Mulaney, Owens, Ramsperger, Sohmer, Sullivan, Thompson, Wemple, Wilcox, being 25; is that correct? A. Yes.

Q. Thereafter Mr. Grady immediately moved to reconsider the vote by which said bill was passed, did he not? A. Yes, he did.

Q. And Mr. Raines moved that the motion to reconsider be laid upon the table? A. He did.

Q. And the President of the Senate then put the question whether the Senate would carry the said motion to lay upon the table, and it was decided as follows, to wit, by exactly the same vote, the same persons voting in the affirmative and the same in the negative? A. Yes.

Q. Twenty-five affirmative and twenty-five negative? A. That is so.

Q. The votes being a tie, the President of the Senate voted in the affirmative and thereupon declared said motion decided in the affirmative? A. That is correct.

Q. At that time there was one Senate district of the State which was not represented in the Senate, was there not? A. Yes, Senator Franchot, I believe, had in the meantime died.

Q. And no successor had been elected? A. No.

Q. And that district was not represented? A. That is correct.

Q. To wit, the 47th district, was it not, comprising the counties of Oneida and Orleans? A. Yes.

Q. No other action was taken upon this bill at the regular session, was there? A. No.

Q. This bill had already passed the Assembly, had it not, at this time? A. Yes.

Q. I call your attention to page 33, being the Journal with reference to the extraordinary session, and ask you if that refreshes your memory that the same bill was introduced in the Senate by Senator Agnew on Monday, June 8th, 1908? A. According to the title of the act, I would say yes.

Q. Well, it was bill, introductory number in the Senate, No. 22, entitled "An Act to amend section 351 of the Penal Code with reference to pool selling, bookmaking, bets and wagers," was it not? A. If the Journal says that such a bill was introduced, I would say yes.

Chairman MERRITT: I think you had better read that into the record before you get through.

The WITNESS: I was not there.

Q. I call your attention to page 53 of the same volume, being the minutes of the extraordinary session, and ask you if the bill did not come up in the Senate for final passage on Thursday, June 11th, 1908; that is correct, is it not? A. It is.

Q. The bill had already passed the Assembly, had it not? A. It had.

Q. And the vote on the final passage of the bill was as follows: for the affirmative, Agnew; Allds; Armstrong; Carpenter; Cobb; Cordts; Davis; Dunn; Fancher; Foelker; Fuller; Gates; Heacock; Hill; Hinman; Hooker; O'Neil; Page; Raines; Saxe; Smith; Taylor; Travis; Tully; Wallace; White; twenty-six, is it not? A. Yes.

Q. And in the negative, Ackroyd; Boyce; Burr; Cassidy; Cohalan; Cullen; Emerson; Frawley; Gilchrist; Grady; Grattan; Harte; Hasenflug; Knapp; McCall; McCarren; McManus; Mulaney; Owens; Ramsperger; Sohmer; Sullivan; Thompson; Wemple; Wilcox — twenty-five? A. Yes.

Q. And immediately after the bill was passed it was ordered that the clerk should return the said bill to the Assembly with the message that the Senate had concurred in the passage of the same? A. I believe that that is correct.

Q. And the bill was subsequently signed by the Governor, was it not, and became chapter 507 of the Laws of 1908? A. According to that, yes.

Q. I show you a copy of the Session Laws of 1908, Volume 2, for the purpose of refreshing your memory? A. Yes, it seems now to be a law.

Q. And that was this bill to which I have just referred? A. That is the bill.

Judge BRUCE: I offer in evidence, if the Committee please, chapter 507 of the Laws of 1908, appearing on page 1873 of volume 2, of the Session Laws of 1908, and ask that the same be copied into the record.

(Received in evidence and marked Exhibit 38.)

Exhibit No. 38 is as follows:

CHAP. 507.

An Act to amend section three hundred and fifty-one of the penal code, relating to pool-selling, book-making, bets and wagers.

Became a law, June 11, 1908, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three hundred and fifty-one of the penal code is hereby amended so as to read as follows:

Sec. 351. Pool-selling, book-making, bets and wagers, etc.—Any person who engages in pool-selling, or book-making at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this State, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools upon the results of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election, or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value, bet or wager, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such result; or any person who, being the owner, lessee, or occupant of any room, shed, tenement, tent, booth or building, float or vessel or part thereof, or of any grounds within this State, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depositary for gain, hire or reward of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged upon any

such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden, is guilty of a misdemeanor, and upon conviction is punishable by imprisonment in a penitentiary or county jail for a period of not more than one year.

Sec. 2. This act shall take effect immediately.

Passed at Extraordinary Session.

Q. Did anyone have any conversation with you, Senator, while this measure was pending in the regular session, with reference to your either voting against the bill or withholding your vote from the bill? A. A number of people spoke to me and asked me to vote against the bill, yes.

Q. Did anyone offer to pay you any money, or other thing of value for your either voting against the bill or withholding your vote from the bill? A. Yes, for the purpose of voting against the bill.

Q. And who was the first person, if there were more than one, who approached you in this manner? A. Frank J. Gardner.

Q. When? A. About ten days previous to the vote being taken, which was on a Thursday afternoon, while on a train coming from Albany to New York.

Q. Had you known Ex-Senator Gardner for sometime? A. I had known him for a number of years.

By Assemblyman TOOMBS:

Q. Was that the first vote? A. That was the first vote.

By Judge BRUCE:

Q. He represented one of the Kings County Senatorial districts in the Senate of 1905 and 1906, did he not? A. He did.

Q. Now, will you state to the Committee just what occurred on that occasion? A. A man came to me whose name was Elperin, I believe.

Q. What is first name? A. I think it is Jacob.

Q. Had you known him prior to that time? A. I had heard of him and I had seen him before, but was not acquainted with him, nor had I ever been introduced to him.

Q. Where did he reside? A. Somewhere in Brooklyn.

Q. Do you know what his business was? A. I believe, a lawyer.

Q. Was he connected with the Legislature in any capacity? A. Not to my knowledge.

Q. Had you seen him in Albany? A. I had not.

Q. Had he spoken to you prior to this time with reference to your vote on this measure? A. He had not.

Q. Please state what was said? A. I said he had not, Governor. My answer was that he had not.

Q. Did you know what connection, if any, at that time he had with Ex-Senator Gardner? A. Only hearsay; I heard that he was a law partner of Mr. Gardner.

Q. Just go on and tell us what occurred? A. He came to me while I was sitting in a Pullman car, alongside of my secretary.

Q. What was your secretary's name? A. John Layher.

Q. Where does he reside? A. At the present time somewhere in Richmond Hill, with place of business in Walabout Market, Brooklyn.

Q. What is his business? A. Commission merchant.

Q. Proceed. A. He came and said, "Senator, Senator Gardner wants to see you for a moment; he is in a state room," or compartment, or whatever it was. He walked away in the opposite direction and I got up and walked into the state room, where Senator Gardner was alone. He said, "Sit down, I want to talk to you." I sat down. He said, "Otto, we need your vote against the race track bill, and I want to make it worth your while from a financial standpoint; in fact, I will give you \$2,000 more than what the other Senators are getting, and they were getting \$10,000." He said he would pay \$2,000 down then and there, and \$3,000 after the Legislature adjourned, and \$5,000, or the balance, in case the Governor would call an extra session. I told him that I would not do it. I told him I could not do it; the Constitution prohibited gambling, and in spite of the Percy-Gray Act, I did not believe that I could vote against the bill, and especially in view of the oath of office I had taken. He says, "This matter will be all blown over; it is one of those nine-day wonders that will be forgotten, and when next fall comes along and you want to be re-elected I will help you, see that you get some Demo-

cratic help." I said, "No, I could not and would not do it;" and he said I was foolish for not trying to make all the money I could get. I said, no, and I walked off.

Q. Was anyone else present besides you and Mr. Gardner?

A. There was not.

Q. Was the door of the drawing room closed? A. It was closed.

Q. And was anybody present during any part of the conversation which you had with Senator Gardner at that time? A. There was not.

Q. Is that all that you now remember that occurred at that time? A. It is.

Q. Did he exhibit to you any money that he had on his person for the purpose of making good his proposition? A. He did not.

Q. Did he say whether or not anyone else was interested with him in his attempts to defeat the passage of the bill? A. He did not, and I did not ask.

Q. When were you next approached by him or anyone else with reference to your vote upon this measure? A. The Monday preceding the first vote a telephone message came to my office while I was out, that I should call at the office of Quarantine Commissioner Schroeder, Frederick Schroeder; he wanted to see me on a very important matter. I went to his office, which I believe was in William street. In any event, it was the office of the Quarantine Commissioner, and there I saw him. He closed the door and talked to me, said he wanted to talk to me about the Rack Track Bill. I sat down and listened to him. He said, "Now, I understand you are going to vote for this bill." I said, "Yes, I am going to vote for it; I believe that the people in my district are for it and I shall vote for it." "Oh, no, that's all right," he said, "you better vote against this bill and I will make it worth your while. I think I can give you \$45,000 for your vote." I said I would not for one moment consider it; and he said, "I can get you perhaps \$4,000 or \$5,000 more." I said, "I would not do it if you got a million." He got angry at me and flushed up, and I would not talk to him any longer, and said good-bye and walked out.

Q. Who was present during the latter or any part of this conversation? A. There was no one present at that time at all.

Q. Where was the commissioner's office at that time? A. I believe in William street, I am not quite sure.

Q. In what office were you with him, in his private office?
A. In his private office; as you enter the office on the left hand side there was a door that led into another office, that I went into, on the right-hand side; there was an outside office on the right-hand side where there were other people.

Q. Was this door closed? A. It was closed after I entered the door, yes.

Q. Did anyone accompany you to the office of Commissioner Schroeder? A. Nobody accompanied me to that office.

Q. Was anyone present with him at the time you went in? A. In the office where he was?

Q. Yes. A. No; people outside of the office.

Q. What time of day was it? A. It was somewhere around pretty close to noon time.

Q. From whom did you receive the message over the phone from Commissioner Schroeder? A. I didn't receive the message; someone in my office got it.

Q. Where is Commissioner Schroeder now? A. At the present time he is in Sing Sing prison.

Q. Having been convicted and sentenced for a felony? A. He was.

Q. Well, were you approached subsequent to that time with respect to your action upon this measure? A. Well, those are the only two that approached me so far as the first vote is concerned.

Q. Well, now, you were in attendance upon the date when the vote was taken in the Senate? A. Oh, yes.

Q. And at its regular session; at its regular session, and voted for the measure? A. I did.

Q. As appears by the record? A. Yes.

Q. After the adjournment of the regular session you underwent a surgical operation, did you not? A. I did.

Q. When did that take place? A. I believe it was on May 10th or 11th; in any event it was on a Sunday.

Q. Where? A. At Staatsburgh, New York.

Q. Who was the surgeon that operated upon you? A. Dr.

Franklin N. Murphy was my physician; Dr. J. P. Prescott was the surgeon that I understand operated on me.

Q Now, subsequent to the regular session and pending the vote in the extraordinary session did any one approach you with reference to your action upon this measure if it came up in the extraordinary session? A. A friend of mine came to me one day by the name of Floyd J. Adams.

Q. Where does he reside? A. 284, I believe, Division Avenue — anyhow, Division Avenue near Keap Street.

Q. What is his business? A. He is a clerk in one of the police courts, Magistrate's Court, Gates Avenue, Brooklyn, New York.

Q. What did Adams say? A. He came to visit me I believe two or three times, I forget, I think twice, and on the last occasion he said to me "What do you think of the nerve of Maxwell?" I said "What is the trouble?" And he said that Maxwell had come to him and asked him to step outside, that he wanted to talk to him in the corridor of the Court House, which he did, and he then said "You are a good friend of Senator Foelker." Adams said, "Yes." "Now I wish you would try and get him to either vote against, or not to go up and vote for this race-track bill. He can name his own price, whatever he may want or wishes to name he will get, and for your services I will see that you get \$5,000." I told him, I said, "What did you say to him?" And he told me that he had told him that he had a good nerve to come and ask him to do anything of that sort, and that he had better keep his hands out of it. In response to that he told him that it wasn't of his own volition that he came, but that he came at the request of Senator Gardner.

Q. Was that all that occurred at this conversation? A. That is all.

Q. Did you say anything to Mr. Adams in response to what he had stated to you? A. Why, I simply smiled, that is all.

Q. Were you approached subsequent to that time with reference to your action on this measure? A. I was asked subsequent to that time by the then sheriff Alfred T. Hobley, he asked me if I would not, if I did go to Albany, vote against the bill. I told him that under no circumstances would I vote against the bill.

Q. Was there anything further said? A. He did say at the

time that he had heard either that someone had received or was to receive something like \$200,000, or \$225,000, for his vote against the bill.

Q. Did he personally offer you anything, money or other thing of value, in the event that you should withhold your vote from the bill, or cast your vote against the bill? A. He did not.

Q. Did he make any threats to you as to what would happen to you politically in the event that you gave your assent to the measure? A. He said he thought I would not be renominated in case I should vote for the bill. I told him that I couldn't help that.

Q. Was Hobley a Republican? A. He was.

Q. And what did he belong to — did he belong to the Republican organization in Kings County? A. Yes.

Q. Did he hold any official position in the organization? A. He was then sheriff of Kings County.

Q. Did he hold any position in the organization of the party? A. He was then one of the executive members of the Senatorial District that I represented, my own home district.

Q. Was he a man of powerful influence in the party within your district? A. Why, he possessed the influence that any executive member possesses, yes.

Q. He referred to your renomination for the Senate, did he not? A. He did; he said he thought that if I voted for the bill I would not possibly be renominated.

Q. Did he state who would oppose your renomination in the event you voted for the bill? A. He did not.

Q. Were you a candidate for renomination that fall? A. I was.

Q. For the Senate? A. No. I had my choice practically of either going back to the Senate or going to Congress. I selected the nomination for Congress.

Q. And you were elected as you have stated, and are now serving? A. Yes.

Q. Did anyone else subsequent to that time approach you with reference to the measure? A. They did not.

Q. Did you have any talk with any other person, a member of the Legislature or otherwise, who made any statement to you

with reference to your voting upon the bill being to your financial benefit, voting against the bill being to your financial benefit? A. No.

Q. Did you have any talk with Senator McCarren in regard to the matter? A. Yes.

Q. What did he say? A. Senator McCarren asked me the Thursday just before the vote, during the regular session, if I would vote against the bill. I said no. He said there were a good many people in my district who no doubt would like to see me vote against the bill. I told him that on the contrary I had received a great many letters in favor of the bill and none against the bill, and that I intended to vote for the bill. He said "You had better think it over. I think you would be doing a wise thing if you vote against the bill."

Q. Proceed. A. He then came to me again on the very morning — no, the night before — no, the morning of the bill, when the first vote was taken.

Q. You mean at the regular session? A. At the regular session. He asked me if I would reconsider and vote against the bill. I said "Under no circumstances, I intend to vote for the bill."

Q. Did Senator McCarren in any of these conversations say anything to you about it being to your financial interest to vote for the bill, or offer you any consideration for voting against the bill, or withholding your vote from the bill? A. No.

Q. Did he say anything to you with reference to your election or nomination during that fall to the Senate? A. Yes.

Q. What did he say? A. He said "If you are afraid of possible re-election or have any doubts about election time, I think I can fix it up for you so you can name your own opponent at the coming election."

Q. What else did he say? A. That is all. I didn't talk to him any further. I laughed at the time myself.

Q. Well, now, you went from Staatsburgh, when you were still ill to the Senate for the purpose of voting in favor of this measure at the extraordinary session, did you not? A. I did against my doctor's advice.

Q. Were you examined when you reached Albany by any

physicians, or did any physicians seek to examine you, other than your own physician, with reference to your ability to go to the Senate Chamber and cast your vote? A. No.

Q. Did any physicians with whom you were not acquainted, to your knowledge, approach you with reference to examining you for that purpose? A. I have heard that two came —

Q. I am asking for your knowledge? A. I don't know.

Q. I don't wish to accept the hearsay evidence in regard to it, as I think I shall be able to make the proof direct. Now, Senator, have you omitted anything which now comes to your memory with reference to any approaching of you by any person or persons with reference to your action upon this measure either at the regular session or the extraordinary session? A. Why, a good many people spoke to me and asked me to vote against the bill, yes.

Q. I am asking you with reference to people who approached you with any offers of anything of value, either money or other thing of value, or any political preferment or advancement in the event that you voted against the bill or withheld your vote from the bill? A. Nothing other than what I have stated.

Judge BRUCE: That is all, at least for the present, Senator.

THOMAS J. MAXWELL, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Maxwell? A. 675 Bedford avenue, Brooklyn.

Q. What is your business? A. Detective, private detective.

Q. How long have you resided at that number in Brooklyn? A. 9 or 10 years.

Q. Are you acquainted with Ex-Senator Frank J. Gardner? A. Yes, sir.

Q. How long have you known him? A. About 12 years.

Q. Have you known him intimately? A. Yes, sir.

Q. Are you also acquainted with Senator Foelker, who just left the stand? A. I know him, yes, sir.

Q. How long have you known Senator Foelker? A. Since he was assemblyman.

Q. Were you also acquainted with Mr. Floyd Adams? A. I know him; yes, sir.

Q. How long have you known Adams? A. Three or four years, I guess, five years, maybe.

Q. Do you recall that during the session of the Legislature of 1908 there was pending in the Legislature a bill with reference to pool selling and betting upon race tracks? A. Yes, sir.

Q. And do you also recall that the Governor called an extraordinary session of the Legislature after the adjournment of the regular session, and that a bill relative to pool selling and betting at race tracks was passed at the extraordinary session? A. Yes, sir.

Q. Now, during the month of May, 1908, prior to the passage of the bill to which I have referred at the extraordinary session, did you receive a communication from Mr. Gardner? A. Yes.

Q. In writing? A. Yes, sir.

Q. Have you made a search for that communication? A. I have.

Q. Have you been able to find it? A. No.

Q. What was it, a letter? A. Yes, a letter asking me to call at his office in New York.

Q. Simply a note asking you to call at his office? A. Yes, sir.

Q. Did you call? A. I did.

Q. Where was his office? A. I think 45th street and Broadway, New York.

Q. What business was he in at that place? A. Well, where I saw him was in the Vaudeville Investing Company, I think, on the first floor, and his office was upstairs, but he was in that office when I saw him.

Q. Was there any person present when the conversation took place between you and him at that time? A. No, sir.

Q. Just go on and tell me what the conversation was, what he said and what you said, as near as you can remember? A. I seen him just four or five days before Senator Foelker went to Albany.

Q. You mean when Senator Foelker went from Staatsburgh, where he was operated on? A. I don't know whether it was from Staatsburgh; I understood it was from Poughkeepsie.

Q. Well, wherever it was, it was where he had the surgical operation? A. Yes.

Q. What did he say? A. He said "Tom, you know Floyd Adams, don't you?" I said "Very well." He said "I want you to take a message to him for me. You go over and tell Floyd that you and him should get to Otto and get him to vote for this bill, and if he does I will give him \$25,000."

Q. Was he to vote for the bill or against the bill? A. Against the bill. I went over to the Gates Avenue Police Court and saw Floyd Adams.

Q. What did you say? A. I said "Floyd, I have a message from Frank Gardner. You and I are to go up and see Otto and tell him that Gardner will give him \$25,000 if he will vote for the bill."

Q. Against the bill or for the bill? A. Against the bill.

Q. Go on. A. Floyd said "No, I think I will write him a letter." And he said "You may come again to-morrow." I went back and reported to Mr. Gardner, and I came back the next day, and Floyd said "Now, Tom, you had better go up and see him yourself." I said "How can I get in to see him?" And he said "You can say you are a member of the Congress Club," of which I was formerly a member.

Q. Was that a political club? A. Yes, sir.

Q. In the district? A. Yes, sir.

Q. A Republican club? A. Yes, sir. There was no mention of any \$5,000, as Mr. Foelker testified to, nothing in that conversation ever transpired, and Adams never said anything about that I had a nerve; he was only too willing to go until he was stopped the next day.

Q. What did you say to him in reference to your coming back the next day? A. I then reported that back to Senator Gardner.

Q. What did Mr. Gardner say? A. He said I should wait a few days and he would let me know. He said "Wait until to-morrow."

Q. Did you wait? A. I did. I went back again the next day and he said "Never mind, I have got somebody else."

Q. Did he state whom he had? A. No, he did not.

Q. He simply said he had some one else? A. That is all.

Q. Did you understand from his conversation that it was some one else in place of you or some one else in place of Senator Foelker's vote? A. I understood it was some one in place of Senator Foelker's vote.

Q. And that there was no necessity of going to see Senator Foelker again? A. That is it.

Q. Did you have any other conversations with Senator Gardner during either the regular or the extraordinary session of 1908, or the intervening time, with reference to this measure? A. No, sir.

Q. That you can now recall? A. No.

Q. Have you stated now, so far as you can at present recall, all that occurred in the conversations which you had with Gardner, and also which you had with Mr. Adams? A. That is all.

Q. You are attending here in obedience to a subpoena of the Committee, are you not? A. Yes, sir.

Q. When were you served? A. Yesterday.

Q. About what time? A. I don't know, around one or two o'clock.

Q. Where? A. Kings County Court House, Brooklyn.

Q. Did you after that time go home? A. I did.

Q. Shortly after you were at home did some one call upon you? A. Yes, sir.

Q. Who was it? A. I don't know.

Q. Did you know the man? A. There were two there at my house.

Q. Did you know either one of them? A. No, sir.

Q. What did they say? A. They asked me — I came to the door and they said "Are you Maxwell?" I said "Who are you?" And they said "We are sent here to see you." One of them looked like a big strong fellow and I said to him "What do you want to see Maxwell about?" He said "I have a message for him." I said "Well, I am Maxwell." And I brought them inside. Then I said "What do you want to see me about?" He said "You have just been served with a subpoena to go over and testify. Now, you call up a certain number," giving me the number.

Q. What was the number? A. 9985 Schuyler.

Q. Do you know now whose number that is? A. I do.

Q. Whose is it? A. Lawyer Goldsmith.

Q. Henry J. Goldsmith? A. Yes, sir.

Q. Who appeared here this morning before the Committee as attorney for Mr. Gardner? A. Yes, sir.

Q. Now go on, what further occurred? A. I said "What do they want to see me about?" And he said "Call up there, my name is Lewis, you call them up at a quarter of ten to-night. Somebody wants to talk with you on the 'phone."

Q. Did you call them up? A. I did.

Q. What occurred over the 'phone — first, whom did you talk to? A. I first called up 9985 Schuyler.

Q. Go on and tell the conversation. A. I said "Who is this?" "This is Mr. Goldsmith." I said "This is the man that is to call you up at a quarter to ten to-night." He said "Oh," and then Senator Gardner came on the 'phone and said "Hello, Tom, how are you," and I said "Hello, Frank, how are you?" I said "I am subpoenaed to go over there to-morrow and I would like to see you before I go over." He said "We are holding a conference up here all night."

Q. Did you say you were subpoenaed and you would like to see him, or did he say that you were subpoenaed and he would like to see you? A. He said that.

Q. Which way was it? A. I said that I had been subpoenaed.

Q. Did you tell him that you had been subpoenaed? A. Yes, sir.

Q. And that you would like to see him? A. I told him I had been subpoenaed, but I didn't say I would like to see you before I go over. I told him I had been subpoenaed, and I told him it was in that Floyd Adams matter, and he said "You jump a taxi and come right up here." I said "No, I will do nothing of the kind. If you want to see me you will come to Brooklyn." We argued over the 'phone and he said I should come up to New York and said he had been in a conference all night, or would be in a conference all night, and we finally made an appointment for me to call him up at 2 o'clock this morning, which I didn't do. I went to bed and didn't call him up.

Q. Is that all that occurred? A. That is all I remember now.

FLOYD ADAMS, called as a witness, being duly sworn,
testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Adams? A. 283 Division avenue, Brooklyn.

Q. What is your business? A. I am assistant clerk in the Magistrate's Court in Brooklyn.

Q. How long have you held that position? A. Thirteen years.

Q. Are you acquainted with Senator Foelker, now Congressman Foelker, of Brooklyn? A. I am.

Q. How long have you known Mr. Foelker? A. Well, I think, fifteen years.

Q. You are a Republican? A. Yes, sir.

Q. You were a member of the Congress club, were you? A. Yes, sir.

Q. Which is the Republican club in his district? A. Yes, sir.

Q. And you have been closely affiliated with Senator Foelker in his political campaigns? A. I have.

Q. Both for the nomination and the election? A. Yes, sir.

Q. Do you know Mr. Maxwell, who just testified? A. Yes, sir.

Q. How long have you known Mr. Maxwell? A. I think about 5 years, 5 or 6 years.

Q. Was he also at one time a member of the Congress club? A. Yes, sir.

Q. Did you hear Mr. Maxwell's testimony with reference to the conversation he had with you some time in May, 1908, with reference to the action of Senator Foelker at the extraordinary session of the Legislature on the bill known as the Race Track Bill? A. I did.

Q. Just go on and state what occurred at that conversation — can you locate time, place and date, if possible? A. I can't give the exact date, it was in the latter part of May, it was between the regular session and the extraordinary session of the Legislature, and at the time that Senator Foelker was sick at Staatsburgh. He came to the court one day and asked me to step out in the corridor, that is, Maxwell did, and as near as I can recall the

conversation it went like this: He said to me, "Now, Floyd, you are a friend of Otto's." I said, "Yes, I am." He said, "I know a way in which you can make some money." I said, "How is that?" He said, "Now if you will go up to Staatsburgh and use your influence with the Senator and get him to vote against the race-track bill it will be worth \$5,000 to you, and Otto can name his own figure." "Why," I said, "Tom, I wouldn't do that, I have too much respect for Otto to even make such a proposition to him." I said, "You are a member of the club the same as I am. Do your own work." I said, "I won't approach him at all in this matter." I said, "My sympathies are against the race-track bill and I would not even approach the Senator." I said, "This is bad business for you to be in. Take my advice and let this thing alone, there is only trouble in this kind of business." He said, "I am not doing this myself, I am doing it for Senator Gardner." I said, "Well, it is bad business and I will have nothing to do with it."

By Assemblyman COLNE:

Q. You said your sympathies were against the race-track bill; you meant it the other way, didn't you, you were for the bill?

A. Yes, I meant I was against the racing.

By Judge BRUCE:

Q. Was anything further said that you can now recall? A. Why, there was some conversation about where this place Staatsburgh was. I told him it was up on the Central Road.

Q. Did you see him afterwards in regard to the matter? A. Maxwell, do you mean?

Q. Yes. A. I never saw him afterwards.

Q. Did you have any talk with Senator Gardner in regard to the matter? A. No, I never saw Senator Gardner in reference to the matter.

Q. Did you at any time go up to Staatsburgh to see Senator Foelker? A. Yes.

Q. How long after this? A. I think it was about, it may have been a week after, one Sunday I went up there. I had been up before.

Q. Did you see him? A. Yes, I saw him.

Q. What did you say to him in regard to this matter? A. Well, I said to him during the course of the day I was up there, I said, "What do you think of the nerve of this fellow Maxwell?" He said, "What do you mean?" I told him, "He came into the court one day and wanted me to come up here and try to get you to vote against this measure, and said you could name your own price, and that I could have \$5,000 for my trouble." He said, "What did you say?" I said, "I told him I had too much respect for you to even suggest the matter to you." He said, "I thank you for that, I am glad you took that position."

Q. Was anything further said that you can now recall? A. Nothing further.

Q. Did you have any conversation later with Senator Foelker with regard to his action upon this measure? A. Subsequent to that time?

Q. Yes. A. No particular conversation except to talk with him about his vote.

Q. Did you have any conversation with him that in any wise related to any consideration that had been offered to him for his action upon the bill, either against it or by withholding his vote altogether? A. No, I considered that rather a delicate matter and I never spoke to him about it.

Chairman MERRITT: (To Judge Bruce.) You have no other witnesses to call now?

Judge BRUCE: Not before recess.

Chairman MERRITT: The Committee will state in reference to the refusal of Senator Gardner to answer, that it directs its counsel to transmit to the district attorney of the county of New York a copy of the record, with the request that he take such steps as the law directs in reference to the refusal of Mr. Gardner to answer the questions propounded to him here on the stand under the subpoena of the Committee, the same course having been pursued in the matter of the refusal of another witness under subpoena, who declined to answer.

Recess until 2 o'clock.

AFTER RECESS.

2 P. M.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Elder.

ROBERT H. ELDER, called as a witness, being duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Elder? A. I reside at 80 Willow street, Borough of Brooklyn.

Q. How long have you resided there? A. Well, for sometime.

Q. How long have you been a resident of the Borough of Brooklyn? A. Well, for about — since 1897, the spring of 1897.

Q. What is your business? A. I am a lawyer.

Q. When were you admitted to the bar? A. In 1896, I think, around that time.

Q. And where have you practiced your profession? A. In the city of New York.

Q. In Manhattan, or in Brooklyn? A. Both places; chiefly in Brooklyn.

Q. Do you hold any public position at this time? A. Yes, I am the first assistant to the District Attorney of Queens County.

Q. And how long have you been first assistant to the District Attorney of Kings County? A. Since the 1st day of January, 1900.

Q. Are you acquainted with Frank J. Gardner, who previously represented the Sixth Senate District of the State of New York? A. I am. I don't know what district he represented; I know he was the Senator.

Q. You know he was a member of the Senate representing a Kings county district? A. Yes, sir.

Q. Were you aware that there was introduced at the regular session of the Legislature in 1908, also at the extraordinary session of the Legislature which was subsequently called, a bill known as the "Race Track bill," being an amendment to section 351 of the Penal Code, relative to betting and gambling? A. Yes, I acquired that information.

Q. Did you ever have any conversation with Mr. Gardner — withdraw that. You are aware, are you not that during the extraordinary session in 1908, that this bill became a law? A. Yes, on the 11th of June, I think, 1908.

Q. Now, subsequent to the passage of that bill did you at any time have a conversation with Mr. Gardner relative to any action on his part in connection with endeavoring to defeat the passage of this bill, either at the regular session or at the extraordinary session? A. Yes, I had a conversation with him.

Q. And when did this conversation take place? A. In the month of March, 1910.

Q. Where? In the District Attorney's office, in my private office in Kings county.

Q. Did you have more than one conversation? A. Only one, on this subject.

Q. Now, will you please state to the Committee all of that conversation? A. Well, I can state —

Q. And kindly state the circumstances under which it took place? A. I had sent for him requesting that he come to my office. I communicated with Henry J. Goldsmith, a lawyer; I told Goldsmith I wished to talk with Gardner, and asked him if he would arrange for Gardner to come to my office; that I didn't know how to find him; didn't know what his address was. He said — Shall I state the conversation with Goldsmith?

Q. Yes. A. He said, "What do you wish to talk with him about?" And I told him that I wished to have a personal conversation with him, that was all. He said, yes, he would tell Gardner to come over and see me. Not long after that Gardner did come over to see me, and saw me in my private office. He wished to know what I wished to see him about; and I told him that I wished to get some information, if he would give it to me, about the efforts that had been made in Albany to defeat the passage of this statute.

Q. That is, during the session of the year 1908? A. Well, that was the way I expressed it; "To defeat the passage of the law." I did not specify it, as I recall, with any fine precision. He said, "What do you want to know for?" Well, I said, "You know that I am interested in these subjects, and I wish to

know — you have known me a long time, and I thought you perhaps would be willing to give me some information, and that this information would be of great value to me. You know that we have indictments in this office against people — indictments that are not yet disposed of — and I want to get all of the information that I can get.” He said, “Well, I am not sure that I care to say much about it.” We had a little further conversation upon that, the exact terms of which I do not now recall, and finally he said, “You know how that money was got together, don’t you?” I said, “I have heard various reports about it, but I can’t say that I do know.” “Well,” he said, “I don’t mind telling you that there was a meeting at Delmonicos at which this money was subscribed.” And he mentioned to me the names of certain persons, whom, he said, were present at this meeting. He said that James Keene was there, and that David Mitchell was there, and that Parsons was there, and that Harry Payne Witney was there, and that Charles H. Hyde was there, and the representatives of the bookmakers were there; I believe he said the Metropolitan Turf Association, and he mentioned some other names of men, whom he said were there; but just on the instant now they don’t occur to me. I might refresh my recollection on some of those names, Judge Bruce. And he said a subscription was made up of money to take to Albany to defeat this bill. He said that a dispute afterwards arose as to whom should handle this money; that \$125,000 of it was handled by Jim Gaffney; and he said that this money was to take care of either of three or four, I have forgotten whether he said three or four, but one or the other, three or four members of the Legislature; as he said, “Tammany men in the Legislature.” He said that of this sum Brady got only \$4,000. He said, “You can imagine how much the others got if he only got that.” He said he didn’t know where the rest of that fund of \$125,000 went. He said that he was in Albany with Charley Hyde; that he went there with Hyde because Hyde didn’t understand the ways as well as he did; and that he knew how to approach the people there, and how to make the arrangements with them. I asked him how large this fund was, and he said, “Oh, it was considerable.” “Well,” I said, “I have heard it was as much as a quarter of a million dollars.” “Well,”

he said, "more than that." "Well," I said, "\$300,000 then." "Well," he said, "more than that." "Well," I said, "how much was it, Frank?" "Well," he said, "if you had said half a million you would have been nearer right." He said that Senator McCarren was very angry because he didn't have the handling of this money. He said he was displeased that Gaffney should have handled the \$125,000, and he was also displeased that what was left of the fund, after that had been taken out, was not given to him to handle. He said that McCarren expressed his displeasure at the idea of a strange man coming up there and trying to get away with such a big proposition and not taking him in on it. He said, because of this displeasure he attributed the defeat of that bill to McCarren — or the success of the bill to McCarren. He said that McCarren was secretly in favor of the passage of the bill simply by way of administering a rebuke to the plan that had been set on foot there, without giving him the control of this money. He said the newspaper men were also taken care of liberally out of this fund, and he mentioned to me the names of men, whom he said, were newspaper men, and whom, he said, had been paid money, and the sums which he said had been paid to such men. He also said that if his advice had been followed that the special election for a senator which took place in a Senate district which he named, but which I now forget, would have taken a different course, and would have resulted in the election of the man who was defeated, who would have voted against the bill, whereupon the bills would have been lost. He said that the Republican leader of that district had asked for \$5,000, and had stated that if he were paid this sum that he would be able to throw the election so that the incoming Senator would vote against the passage of the bill. He said that it was decided not to pay this money. He had advised that the money be paid. He mentioned to me the name of that Republican leader. If it were mentioned to me I might recognize it. At this moment I don't recall exactly what it was. He said, as I recall, that Senator McCarren had advised against the payment of this sum of \$5,000 to this Republican leader, and this he considered, he said, "The trick that McCarren played that really caused the passage of the bill." I mentioned to him the name of Otto Foelker — Senator Foelker.

I said, "I have heard a good deal about that; what about that?" "Well," he says, "Foelker got \$10,000." I said, "I heard that he had gotten \$15,000, and then I also heard that he got nothing." He said, "Foelker got \$10,000;" he said, "And then he voted for the bills anyhow." I said, "How did that come?" "Well," he said, "you know Foelker was very sick, and we had on foot a scheme for him to be brought to Albany and be examined by three physicians at the Ten Eyck Hotel, who were to pronounce him too ill to go to the Senate Chamber to vote." He said, "The three doctors were there," he said, "there was Dr. McCorkle, of Brooklyn; Dr. Hughes, of Brooklyn, and a doctor whose name I forget, of Albany, I don't just now recall the name."

Mr. KRESSEL: Dr. Bailey?

A. I am not able to say if Bailey were the name he mentioned, but he mentioned the other two doctors, who, he said, were ready to pronounce Senator Foelker too ill to go to the Senate Chamber, but, he said, "Canon Chase stuck so closely to him,—to Foelker—that the scheme didn't come off, and Foelker voted for the bill. This conversation was in part in response to questions. He also said that Charles H. Hyde,—no, he said Charley Hyde—at the meeting at Delmonico's, had made a subscription for William Ingerman. He said Ingerman failed to pay his subscription, and Hyde, he said, put in a bill for personal expenses some way, so as to cover that subscription. He said that he had an arrangement with Hyde by which he was to be paid a certain amount for doing this work in Albany with this money; but, he said, that Hyde did not pay him all that he had agreed to pay, and that made it necessary, he said, "for me to take \$10,000 out of the amount which I did receive in order to make good on two agreements which I had made because they were agreements on which I would not flunk." And he said, "\$5,000 of that money went to the President of the Senate."

Assemblyman FOLEY: President pro tem, you mean? A. He said that, what I tell you, he said the President of the Senate.

Assemblyman FOLEY: He didn't mean the Lieutenant-Governor? A. He said "the President of the Senate."

Assemblyman FOLEY: He didn't mention any other name? A. That is all.

Judge BRUCE: The President of the Senate did not have a vote on the passage of the bill.

WITNESS: That is constitutional law, I suppose.

Assemblyman FOLEY: Did you understand to mean Senator Raines and not Governor Chanler? A. Well, that is what I understood, but I give you the language he used.

Assemblyman FOLEY: Because, you know Governor Chanler voted against the motion? A. I knew he voted against the motion.

Assemblyman FOLEY: And in favor of the bill? A. Yes. But what I understood is not evidence here; but that was the impression I got. I do not at this moment recall anything further that was said in this conversation about this subject. There were other things said between us, and, as I say to you, there were other names mentioned.

Q. I have asked you for the conversation. A. The other names that he mentioned to me as being at this meeting at Delmonico's I do not now recall, I do not refresh my recollection upon them. But in speaking of the newspaper men, I recall the names of some of them; at any rate, I recall that he said that a man, McAtee, I think he said of the Sun, had received \$3,000; that Patrick Relahan, of the Press, had received \$3,000. He mentioned both the names and the papers when he was speaking of it to me. He said Louis Seybold, of the World, had received \$3,000. He said that George Jangin, of the Brooklyn Citizen, had received \$300. That Mr. Tyrell, of the Eagle, had received \$300. That they had a discussion as to whether they should give anything to Mr. Earley, of the Standard-Union, or not, but that Earley was a man who sometimes drank a little, and that when drinking he got very talkative, and they were afraid that he might get to drinking and tell about it, so they "didn't take him in," as he expressed it. He said the Times man,— the Times man of Brooklyn, as I understood it, got \$300. There were several other names he mentioned which don't occur to me. I don't now recall anything further that we said about this subject, except that he said, "You don't want to call me as a witness, do you?" And I said, "No." That's all.

Q. Did he say, do you recall now, that the leader in the vacant Senate district, which was a district of the up-State counties of

Niagara and Orleans, was? A. I don't recall it; I might recognize the name. I might try to refresh my recollection over-night, and tell you to-morrow.

(Judge BRUCE whispers to witness.)

A. I recognize that as the name.

Q. I do not want to mention names of parties not connected with it now. What is your recollection of the name he mentioned?

A. The name he mentioned was L'Hommedieu.

Q. Did he state when this meeting at Delmonico's took place?

A. He did not.

Q. Did he state whether or not it was before the extraordinary session and after the regular session, or prior to the time the regular session adjourned? A. He didn't say.

Q. Did he state to you the amount contributed by the various members of the Metropolitan Turf Association? A. He did not.

Q. Did he tell you the number of members of the Metropolitan Turf Association who contributed? A. He did not; not that I recall; I don't believe he did.

(Judge BRUCE holds whispered conversation with witness.)

Q. Can you recall now other persons than you have mentioned who were present at the Delmonico meeting? A. Yes, Gene Wood was the name of one that he mentioned.

Q. Can you recall any others? A. No, I don't now; I don't recall.

(Judge BRUCE holds whispered conversation with witness.)

A. Yes, that is true.

Q. Was there any other name you can remember? A. Yes, he said Hitchcock was there.

Q. Was he connected with the Coney Island Jockey Club? A. He didn't designate that. I asked him what Hitchcock it was, and he said that —

Assemblyman TOOMBS: What was his first name; there are three, two or three Hitchcocks? A. I didn't ask him; I don't know.

Q. Did he state how much he received, or how much any one associated with him received, in their attempts to defeat the bill?

A. What do you mean? For disbursements?

Q. No, for their own compensation, or share? A. No, he did not.

Q. Did he state what Mr. Hyde received for himself, or retained? A. No, he did not; not so far as I can recall, and I think I would have remembered it if he had said it.

Q. Did he state where he stopped while at Albany on this matter? A. I don't believe he did.

Q. Did he say whether he stopped at the Ten Eyck or Stanwix Hall, or the Hampton, or any other hotel? A. No, I don't remember that.

Q. Did he state where Mr. Hyde stopped while he was there? A. No, I don't remember that.

Q. Did he state whether or not they stopped together? A. No, he didn't tell me that.

Q. Now, Mr. Elder, searching your recollection, and pausing a minute for the purpose, do you recall anything else that was said by Mr. Gardner to you at this time with reference to this matter? A. No, I do not.

Q. Well, if your recollection is refreshed over night, will you attend to-morrow, if you are not in court in Brooklyn, in actual trial of a case, and give us anything else that may be recalled to your recollection? A. Yes, certainly.

Judge BRUCE: That is all.

Assemblyman FOLEY: Was any transcript taken of what Senator Gardner said at the time? A. No.

Assemblyman FOLEY: Was it ever reduced to writing? A. No, not so far as I know; I never did.

Assemblyman FOLEY: Did it occur to you as district attorney, or assistant district attorney, of that county, that the evidence that he would give, would be material to a criminal prosecution? A. No.

Assemblyman FOLEY: And that it would best serve the interests of the people to have it reduced to writing? A. No, I didn't think so. It could not have served in any criminal prosecution in my county.

Assemblyman FOLEY: Was any attempt ever made to bring the matter before the Grand Jury? A. No.

Assemblyman FOLEY: Although part of this transaction may have taken place in Kings county? A. Not the least, it was purely a personal conversation that we had.

Assemblyman FOLEY: You, as a peace officer there, representing the people, knew that unconscionable practices, illegal practices, criminal practices; were going on at Albany, and yet nothing was done to bring anybody to justice? A. I don't know anything about it. I only knew what was told me.

Assemblyman FOLEY: I am not asking that in an attempt to criticise you, but simply to find out whether the statement was reduced to writing at that time. A. I simply made these inquiries from my personal inclination. I did not reduce it to writing.

By Senator WAGNER:

Q. You never communicated it in conversation to the District Attorney of Albany county? A. No, I never did; a part of this information I communicated to the Governor, but outside of the Governor I did not.

By Assemblyman FOLEY:

Q. Governor Hughes? A. Governor Hughes.

By Chairman MERRITT:

Q. All the information that you have stated is the result of your conversation with Mr. Gardner. A. I have simply told you what he told me.

By Assemblyman FOLEY:

Q. You said you heard that Senator Foelker got \$10,000 or \$15,000; who gave you that information? A. I met a newspaper man in Brooklyn one day, and in conversation with him he told me that he had heard that Foelker got \$15,000.

Q. That was simply on hearsay, his statement? A. Well, I don't know; he said "I know," but I don't know how he knew, you know. We do not all understand what legal knowledge is.

Q. And the other alternative, as to who said that he did not get any, who informed you as to that? A. Canon Chase; he said he was satisfied, Canon Chase did, that Senator Foelker had received nothing.

By Assemblyman COLNE:

Q. Then you do not remember any more names of legislators that received money for voting on the proposition? A. At this time I did not.

Judge BRUCE: Is that all, gentlemen? (To the witness.) That is all.

GEORGE L. TIRRELL, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside? A. Brooklyn.

Q. How long have you resided in Brooklyn? A. Ten years.

Q. What is your business? A. I am now Secretary of the Department of Finance.

Q. Prior to that time, what business were you engaged in? A. I was in the newspaper business.

Q. Were you in 1908, Albany correspondent of the Brooklyn Eagle? A. Yes.

Q. You have heard the testimony given by Mr. Elder in relation to a conversation which he had with Mr. Gardner, have you? A. Yes.

Q. During the session of 1908, during either the regular session or the extraordinary session, did you see Mr. Gardner in Albany? A. I saw him during the regular session.

Q. Where did you see him? A. Shall I tell the circumstances under which I saw him?

Q. Yes, tell it all; I was just going to locate the place. A. I saw him at the Hampton Hotel.

Q. Tell all the circumstances of your seeing him there, and tell it in your own way, everything that occurred. A. I used to lunch at the Hampton Hotel sometimes, and was generally late in getting down to lunch because the papers went to press about two o'clock or half-past two. I went down to the Hampton Hotel with some newspaper man to lunch—I cannot remember who it was—and we had luncheon. On the way out, some person whom I did know, called this man aside, and he came back

and spoke to me, and said "Frank Gardner is here in the house, and would like to see you." I said "What about?" "Why," he said, "I don't know." I had known Senator Gardner pretty well before, and I said, "Where is he?" He said — he took me over, and as I remember it, he introduced me to a man named Eilperin. I think I had met Eilperin before.

Q. Jacob Eilperin? A. Jacob Eilperin. I think I recognized him as a former clerk in the Adams Street Court, but I didn't know him well, and I think he said — I am not positive about these circumstances — but my recollection is that Eilperin said "Frank wants to see you." We went to the second, I think — I went with him to either the second or third floor; my recollection is that it was room 204. I could not say whether it was the second or the third floor. We took the elevator, and he opened the door and I went in with him, and Senator Gardner was sitting there, and he shook hands with me, and Mr. Eilperin went into the next room; there were two connecting rooms, and Mr. Gardner then said, after a few commonplaces, he said "I am up here on this race-track matter." I said, "That is interesting," in a more or less joking way. I said "Which side are you on?" He says "I am up to beat the bill." I said "That is also interesting. What can I do for you?" "Well," he said —

Q. Just let me see if I can refresh your recollection up to that time; didn't he also say to you at that time that "I am in that business now?" A. At just about this time in the conversation, he said "I am just starting in this business regarding legislation, and I expect to develop it. I will take an office on 42nd street, and I expect to make a big go of this." I do not know whether he said lobbying or not, or just "legislative business." Then he said "I want to take care of — no — yes — I want to take care of about three or four of the newspaper men.

Q. Before you go to that, did he state that he expected a resolution offered there to investigate Wall street and he expected or hoped to get the job to take care of it? A. He did say something about that in substance.

Q. Go on from that; pardon my interruption. A. He said "I want to take care of three or four — either two or three or three or four — newspaper men," and I said, "In what way?" And he

said "Why, I want to"—he said, "I want to give you"—it amounted to this anyway—"I want to give you \$300." I said "What for?" He said "Just to know that we have the good will of the newspapers." I said "Nothing in that at all. Have you any definite proposition about work that can be done for you in a newspaper way that you wish to submit to me?" "Well," he said, "I want to keep informed of what is going on." I said "No, that is not the character of work that I mean." "You know what I mean, legitimate publicity." He said, "I think that can be arranged very easily." "Well," I said, "That is not your proposition at the present time," and I said, "Why, Frank, I never took—I have never taken, and I do not like that kind of money, a man in this business," and the conversation passed on from that. That is all that was said to me. Oh, he did say, in a rather—I don't know how I can describe it—swaggering way, putting his hands in his pocket and pulling out what looked like a substantial lot of money, and he said, "The people I am working for"—no, "The people that sent me here have plenty of money." Then he said "I hope you will see your way clear to take this," and the conversation dropped right then. I did say in addition, "Why, Frank, if there is any definite work that you have in view, I wish you would submit it to me, and meantime I will consider the question whether there is definite work to be done in a publicity way;" and I said in addition to that "Before I do anything of that kind, I want to go back and discuss the propriety of doing publicity work for the anti—the race-track—the bill interests.

Q. The race-track? A. The race-track. That was all that was said in relation to money at the time, and I did not see him again.

Q. You say this was a substantial roll of bills; did you notice the outside bill? A. It was not a roll.

Q. A package of bills? A. A package of bills. I could not swear to it, but I would almost say that there was a thousand dollar bill on the outside.

Q. Did you say anything in reference to his carrying around an enormous sum of money like that on his person? A. I said "Frank, that looks to me like an enormous sum of money to carry

around;" and he said, "I could carry a million without any trouble at all."

Q. Did he say anything to anyone in relation to whom he had paid money, or was going to pay money to? A. An answer to that question would have to be surmise on my part. He did not say that he —

Q. I don't want any surmise; give your best recollection. A. In the general discussion, he asked me, he said "What do you think of the chances of the bill?" I said "It looks like a very even thing," and I would not have ventured to predict how it was coming out in the Senate; he said "Well, we have eleven"—I could not say whether he said "We have eleven Senators," or "There are eleven Republican Senators on our side," but he mentioned the figure eleven, and he said, either "We have eleven Senators," or "There are eleven Republican Senators on our side," and he said "We count on the entire Democratic vote except that of Senator Fuller of Brooklyn."

Q. Did he mention any names of Senators to whom he had paid money, or to whom he had promised money, or to whom he expected to pay money? A. I do not remember.

Q. Did he mention the amounts he was paying to any Senator? A. I don't recall that he did.

Q. Do you recollect whether or not he said, Mr. Tirrell, to refresh your recollection—and you will pardon my language if I try to be verbatim correct—"Those two sons of bitches of Republicans in Brooklyn expect to get twice as much, two and one-half times as much as anyone else." A. I think he said substantially that.

Q. And did he say that they expected to get twenty-five thousand dollars?

Mr. KRESEL: Apiece.

Q. (Continuing.) Apiece. A. May I correct the last? I think he said "More than twice as much."

Q. I said, "Two and one-half times as much?" A. More than twice as much.

Q. More than twice as much? A. What is your last question?

Q. Did he say that they expected to get two and one-half times as much as anyone else, twenty-five thousand dollars apiece, or

more than twice as much as anyone else, twenty-five thousand dollars apiece, or that, in substance? A. I do not think I can answer that question under oath. I don't think I can recollect.

Q. Just a moment. Pause and search your recollection, if you kindly will. Don't you recall that he mentioned that these men expected to get twenty-five thousand dollars, and that that was more than twice as much as anyone else? A. I remember carrying that away with me, that those two men expected to get twenty-five thousand dollars. I cannot remember that point in the conversation.

Q. But that was the impression you gathered from the statements he made? A. Yes.

Q. Did he mention the names of any other persons that he was going to pay money to? A. I did not get the impression that he was going to pay them.

Q. The question perhaps was wrongly framed, then. Did he mention the names of any other persons, other than those you have already mentioned, that he had paid money to, or that he expected to pay money to? A. My recollection is that—for my own purposes as a newspaper man, wishing to know the attitude of various Senators, both Republican and Democrat, I asked him questions about the different Republican Senators, how they stood; and in answer to those questions he said, he answered the questions, when I mentioned the names of the Senators, and told me which side he believed they were on.

Q. That was only going down the list of Senators who favored the chances of the bill, whether a man was for the bill or against the bill? A. That was the only reason that I continued the conversation, was to get what information I could.

Q. Just answer my question. I wish to know whether or not he said that any of those men were to receive a consideration for their action upon the bill? A. I don't remember.

Q. Whether a specific consideration or in substance? A. I don't remember.

Q. Will you endeavor to search your recollection between now and later sessions of the Committee, say to-morrow, and if any other parts of this conversation occur to you, which you have not mentioned there, will you kindly inform me? A. I will. Judge Bruce, but may I say that the newspaper men in Albany

at this particular time were practically devoting all their attention to this race-track matter. We were constantly hearing rumors of various sorts, many of them concerning alleged bribery, of which some were worth following up and some were not. There was such a mass of this detail, and we were writing daily stories, that I think it would be impossible for me to recall.

Q. If you do, you will let me know? A. Yes.

Q. Did you ever go to see him again? A. I have seen him since.

Q. Did you see him during the session? A. No, I went back to Brooklyn. If I may, I will state that I went to Brooklyn and discussed with the then assistant managing editor, my superior, whether it would be proper for me to take compensation from the racing interests for certain publicity work.

Q. Which you were to do? A. Which I was to do if I did it; and he said it was entirely a question for me to settle. After giving it consideration over Sunday, I decided, although I had another opportunity, I decided not to do it.

Q. And you received no consideration? A. No.

By Assemblyman FOLEY:

Q. And you did not receive the \$300? A. No.

By Judge BRUCE:

Q. Or any other amount? A. When?

Q. At any time. A. What do you mean? I have received no money from Mr. Gardner or anyone else, for race track work.

By Assemblyman COLNE:

Q. And your reports in the paper along that line, would they have led anyone to believe that you were taking that attitude? A. I was never criticized for my unfairness in any reports in the papers. I was complimented by the managing editor on my intimacy with the vote and the facts of the case, and I do not think there was ever any suspicion in reference to my conduct about it.

By Judge BRUCE:

Q. The Brooklyn Eagle vigorously supported the bill from start to finish, did they not? A. Yes.

Q. Did you see Mr. Hyde up there? A. I did not.

Q. You never saw him up there? A. Oh, never? Wait: I saw Mr. Hyde in the back part of the Assembly Chamber on the day that they had a public hearing there, when Governor Black spoke. I think I shook hands with him.

Q. You did not see him at any other time? A. No, sir.

Chairman MERRITT: We will adjourn.

Chairman MERRITT: The Committee will stand adjourned until to-morrow, October 20th, 1910, at 11 A. M.

FOURTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, *October* 20th, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. VICTOR M. ALLEN.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, Esq.,
ISIDOR J. KRESEL, Esq., } *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Seibold.

LOUIS SEIBOLD, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Mr. Seibold, where do you reside? A. I reside at 243 West 44th street, Manhattan.

Q. What is your occupation? A. I am a newspaper reporter.

Q. Connected with what paper? A. The New York World.

Q. Did you read the evidence given yesterday by Assistant District Attorney Elder of Kings county, with reference to the statement made to him by Ex-Senator Gardner, in which he said that

he had paid certain moneys to you in connection with your work as Albany correspondent of the World in 1908. You have read the evidence, have you? A. I have, yes, sir.

Q. And do you wish to make a statement in reference to it? A. Yes. As I read the statement, Mr. Chairman and Governor Bruce, it was that Mr. Elder had testified here that Mr. Gardner had said that he had given me \$3,000. I wish to say that if Mr. Elder told the truth, then Mr. Gardner is an unmitigated liar; and if Mr. Gardner did not tell Mr. Elder, that remains to be established. I trust it will be. I have never had any relations with Mr. Gardner in my life beyond those of a casual acquaintance while he was a member of the Legislature. I have never had any business relations with him. He never gave me \$3,000, or 3,000 cents, or thirty cents, or three cents. He had no reason to do so; and if he had proffered it to me, I think there would have been trouble. I wish to add to that that neither Mr. Gardner nor any other man gave me any money — any sum of money, — in connection with the race track legislation at Albany, two years ago, or for any purpose. I do not know that I can add anything more to that.

Q. You were the Albany correspondent, were you, Mr. Seibold, of the New York World during the regular session, and the extraordinary session of 1908? A. I was, yes, sir.

Q. You knew there was a bill pending in the Legislature during the regular session of 1908, and also in the extraordinary session, which was known as the "Race Track Bill," a bill amending section 351 of the Penal Code, with reference to betting? A. There were two bills, I believe, Governor.

Q. You knew of the existence of these measures, did you? A. Yes, sir.

Q. Did you see Senator Gardner in Albany during either the regular session or the extraordinary session of 1908? A. I saw him there two or three times, but I could not accurately fix the date. It was during the regular or extra session. I saw him in the cafe of the Hampton Hotel on one occasion with some men whose identity I do not now recall. I saw him after that, I think, either there or some place around Albany; I don't remember.

Q. Now when you saw him first, — take up the first time you

saw him,— did you interview him with reference to his presence in Albany and what he was there for? A. I did not.

Q. Did he state anything to you with reference to what he was doing in Albany, and what his business was? A. He did not.

Q. Did he make a remark to you, or to anyone in your presence relating to the race track legislation? A. No, sir.

Q. Did you ever see him in his rooms at the Hampton Hotel? A. No, sir.

Q. Do you recall who was present at the time you first saw him in the cafe of the Hampton? A. No, I could not accurately, because there were three or four men; I think they were dining there, or something of the sort.

Q. Did any newspaper man there interview him about his presence in Albany? A. I do not recall that they did.

Q. Do you recall the names of the men who were dining with him at the time? A. No, I would not like to venture that at this remote time.

Q. Now, you say you saw him subsequent to that time; did you see him in the Hampton, or at the Capitol, or around the streets or elsewhere in Albany? A. I don't think he was at the Capitol; if he was I didn't see him there; it was either, probably in some cafe or on the street or some place around the city.

Q. At this time you saw him, referring now to the second occasion, did you have any conversation with him? A. I had none.

Q. Did you hear anything he said to anyone who was present with reference to his presence in Albany or his activities there? A. I heard he had accounted in certain ways for his presence there, but it was merely hearsay.

Q. Did you hear him say anything at the time? A. No, I did not.

Q. Do you remember who he was addressing, the people he was talking with at the time? A. No, I couldn't say.

Q. I very frankly state to you why I am anxious to ascertain if I can, so as to see if we can call before the Committee those persons, to ascertain whether Mr. Gardner said anything to them with reference to the reason why he was in Albany at that time, and what he was doing; that is my purpose. A. It left so little impression on me at the time there was nothing to fix it

for any particular purpose, so that I did not pay any attention to it, who the people were.

Q. Now, take the third occasion on which you saw him, do you recall when that was, and where it was—you said you thought you saw him three times? A. I saw him probably two or three times; perhaps four times.

Q. Did you on any occasion see him at any other place except in the cafe of the Hampton? A. No, except perhaps on the street.

Q. Did you on any of the occasions when you saw him have any conversation with him, or anybody in his presence, as to his presence in Albany? A. None at all.

Q. And do you recall the names of any of the persons that you saw him in conversation with on any of these occasions when you saw him? A. I would not like to say, Governor.

Q. As I said before the reason I ask that question I want the opportunity, if possible, if he said anything to them as to the reason of his presence there; he may have said what his business was there; I want to know if you can recall any newspaper men or anyone else who he was talking with at Albany, that I may find out if he said anything as to why he was there? A. The thing made such a faint impression I do not want to state, because I am not certain.

Q. I don't care about impression, but if you have the recollection I would like to have you give it to me. A. I could not do it.

Q. If your recollection is refreshed at any time hereafter will you kindly let me know if you can recall, Mr. Seibold? A. I will, sir.

Q. Now the World was strenuously and vigorously advocating the passage of the Anti Race Track Bill, was it not? A. Very much so.

Q. It carried on a very aggressive campaign in favor of the measure? A. It did.

Q. I presume that the information that appeared in the World during the regular session, and during the special session from Albany, with reference to the progress of the bill was written by you, was it? A. Written by me or my assistant, for both the Morning and Evening World.

Q. I noted in the edition of the *World* for this morning extracts of news items that appeared in the *World* from time to time during the pendency of this measure in the Legislature, either at the regular session or at the extraordinary session. Now, just hold this in your hand. (Hands paper to witness.) Calling your attention to page 3 of the morning edition of the *World* of this date, and calling your attention to the extract there from the morning edition of the *World* under date of March 31, 1908, will you kindly read that and tell me whether or not that was a communication of yours to the *World*? A. I think it was, yes, sir; quite sure of it.

Q. It states: "The \$600,000 which the book-makers and others are said to have sent here to buy enough votes in the Senate to defeat the bill does not materialize as far as can be learned. But the toilers in the lobby seem convinced a pile of good money will transfer ownership if the bills are defeated. Unofficial quotations of votes range from the price of a couple of high balls to \$20,000. But if the track people have made use of money they have done it so adroitly as to defy detection." Now, Mr. Seibold, will you kindly state to the Committee what information you were able to gather at that time with reference to the presence of this fund in Albany for the purpose of defeating the bill, that you recall? A. I could not give the exact authority at the moment. But undoubtedly it was partly gossip, that was talked of in the lobby of the hotel, or the Capitol. I could not fix it down to any one individual.

Q. Do you recall any conversation that you had there, with persons or individuals that were there, who were in opposition to the bill, do you recall any conversation you had with them in reference to the presence of money there to be used for the purpose of defeating the bill? A. Why, there was talk of that almost every day. I don't know that anybody ignored that feature of it. It was a guess,—somebody would come along with a guess, would quote him. As far as the Senate was concerned, why the Senators on both sides were naturally greatly excited, and they were talking back and forward. It might have been some Senator in favor of the bill.

Q. Do you recall in the interview with any Senator, either in

favor of the bill or in opposition to the bill, that stated to you that anyone had approached him with reference to his action upon the measure? A. No, I can't think of any.

Q. Do you recall any conversation that you had with any person, not a member of the Legislature, who was there at the Capitol, or elsewhere in Albany, who made any statement to you in reference to any activity in the use of money for the purpose of defeating the bill? A. I couldn't say that anyone individual, but I think quite a number. They were rather acrimonious at that stage of the game. I assume charges flew back and forth on both sides, as they do in a controversy of that character. Now, those Senators in permitting correspondence, or reporters to use information, do not permit the disclosure of their names. That is pretty well understood I think by the public.

Q. I appreciate that, but, of course, when the Senate itself designates a Committee for the purpose of investigating the facts with relation to that, I think we can assume that any code of honor or of ethics which would make such communications confidential can be said to have been waived by the Legislature itself, when it appointed a committee of this character; consequently, I want to find out, Mr. Seibold,—you were an active newspaper man up there,—what information you had from any individual either in the Legislature or out of it, with reference to the presence or use of money for the purpose of defeating the bill? A. I assume that it was very good information, Governor Bruce, or I would not have printed it; but I cannot at the moment recall just if it came from anyone particular source; because it was gossip or talk, all around Albany, around the Capitol.

Q. Well, are there any sources of information which you now recall, which you can give the Committee? A. No, I don't think so.

Q. Coming down to the item that appears under date of April 1st, you will note, "While the debate was progressing in the Senate,"—was that written by you, Mr. Seibold? A. Yes, sir; I think so.

Q. Taking the first paragraph: "While the debate was progressing in the Senate the race-track interests were making every

effort to secure two more Republican votes, and according to the gossip in the lobby they offered a fortune to at least two Senators to desert the reform cause and supply the votes necessary to retain the McCarren amendment." Now, can you give us the names of those Senators? A. Well, let me see. I think they were trying to get more than two, if I recall the condition right. On the first vote they had I believe, twenty-four, didn't they?

Q. Twenty-five, I think the vote showed? A. Well, I think that the names of perhaps half a dozen Senators who voted for the bill on the first time were talked of as being some of the men they wanted to get. They wanted to get anybody they could I understood.

Q. Can you give me the identity of the two Senators that you had in mind at that time, or any information with reference to their being offered a fortune to desert the reform, cause and supply the necessary votes to retain the McCarren amendment? I may say frankly that my purpose is for the purpose of calling those Senators to ascertain if possible the persons who approached them? A. No, Governor, I cannot do so; not with any degree of accuracy. I don't want to —

Q. Now, taking the item under date of April 5th, following down the column, was that written by you? A. Yes, I believe it was; I think I recall that.

Q. "The lobby hears many fascinating reports. One is that the Republican organization, having been assured of a great campaign fund if the race-track bills are defeated; another is that the race-track people will not regard \$300,000 as too high a price expended in any way to accomplish the defeat of the bill." Now, did you have any conversation with any one from which you ascertained the information that the Republican organizations were assured of a great campaign fund? A. I assume that I heard it from someone in the lobby.

Q. Do you recall who the person was? A. I do not.

Q. Do you recall whether you received any such information from any Senator? A. It might have been; I don't fix it though.

Q. Do you recall whether or not you received any such information from any persons not members of the Legislature, who were there working in opposition to the bills? A. No; I do not believe so; I am not sure about that.

Q. Will you search your memory just for a moment, Mr. Seibold, and see if you can give us the names of any such persons. Do you know of any persons, Mr. Seibold, that were up there working in opposition to the bill? A. Yes, I should think there were probably about a thousand one day that I recall.

Q. The day of the hearing, I presume? A. On the several hearings.

Q. I recall, of course, there were many persons who went up there to attend the public hearing, because there was a very large delegation that went from different parts of the State up there to attend the public hearings on the measure; but I am speaking about persons who were there actively working around the Legislature or with legislators during the pendency of the measure, for the purpose of defeating the bill? A. There were quite a number of them; for and against the bill; both sides.

Q. Do you recall whether or not that the information which you printed here you derived from any persons who were there either for or against the bill? A. No, because we do not as a rule,—at least I do not take testimony of that kind. I don't want that sort of stuff. I wanted to know from the inside, not the outside.

Q. Did you get any information from the inside with reference to the methods that were being adopted for the purpose of defeating the bill? A. I may have done so.

Q. Do you recall now from whom you received such information? A. No, I cannot.

Q. Did you see Mr. Charles H. Hyde in Albany? A. Mr. Hyde may have been there but I never saw Mr. Hyde in my life until April or March of the present year, when I was introduced to him in this building. I understood then he was there, but I never saw him.

Q. You didn't see him? A. Because I didn't know him.

Q. Now, coming down to the next item there, under date of April 6th: "The lobby, which figures out results in terms of money showed strange alarm to-night, over the good news that was given out. It is said the race track people are willing to pay a large sum to get the necessary two votes. The price has been variously estimated at from twenty-five dollars to twenty-five thousand to fifty thousand dollars; some have put it as high as a hun-

dred thousand dollars." Was that written by you? A. I believe, so, yes, sir.

Q. Could you give the Committee, Mr. Seibold, the sources of your information in regard to that statement? A. I could not identify it with accuracy enough to be of any value, I don't believe.

Q. Coming down to the date of April 8th, did you write the item here under date of April 8th? A. Yes, sir, I believe I did.

Q. "Meeting one of the Democratic Senators who had voted against the bill, when asked for an explanation, was quite excited to-night said, 'We did not have to kidnap any Senators as they said we did with Fancher; we didn't have to; there was an easier way of getting them. I would like to have as much money as there was in the barrel that the race track people cracked. It ought to be a good summer for us, coming as it does on the top of hard times.'" Who was the Senator with whom you had this conversation? A. I don't know that I could identify him, Governor.

Q. Won't you search your memory for a moment, and see whether or not you could not recall who that was. Now, this was a special interview, you recall, Mr. Seibold, with a Senator, who has information which would be of great value to the Committee; because he says: "We did not have to kidnap any Senator as it is said we did with Fancher; there was an easier way of getting them." Now, if you can give it, if it is possible for you after searching your memory to give the name of this senator it would be of great importance and value to the Committee? A. I talked with a good many Senators that day, and I am not quite sure just which it was.

Q. Won't you search your memory for a moment and see if you could not say the name. You will gather from the statement that it was a member of the minority, and it was one who voted against the bill; maybe that would aid you in refreshing your recollection? A. Yes, I have that in mind, in trying to figure it up. I would not like to venture.

Q. Haven't you some recollection, Mr. Seibold? A. I have not, of that particular incident, no, sir. It took this to refresh my memory then that I had written it.

Q. You have no recollection then, in regard to this matter, whatever? A. No.

Q. Now take the next and the last extract that was printed

down at the foot of the column, Mr. Seibold; did you write that item? A. Yes, sir, I believe I did; I am not quite sure that I did.

Q. The race-track people, in figuring up the commercial end of the battle, admit that it was pretty heavy. The clearest idea of its extent is that the two political machines of this State will benefit more from the sand-bagging of the Governor's bills. Each of these organizations, according to an apparently well-established report, will receive \$250,000 for "services rendered." In addition to this, there were some "incidentals approximating \$250,000 more, for which there will be no written accounting." Now, will you give us detailed information with reference to that? A. I regret that I cannot do so; that was undoubtedly based on the expectation that we could get from various sources the account —

Q. What I wish to ask is, whether or not you had any definite information from any definite source with regard to the report that each of these organizations, speaking of the State organizations of two political parties, would receive \$250,000? A. No, I have none.

Q. Did you have any conversation with any person there, either for or against the bill — A. I must have had.

Q. Whom you now recall, who stated to you, or gave that information to you, rather? A. I must have had, or I probably would not have written it, but I do not recall who it might have been; it might have been somebody that knew of it, it might have been somebody that was merely guessing about it, as we were.

Q. Will you endeavor, by looking over the files of your papers, which, of course, would give your complete reports from day to day, to see if you cannot refresh your recollection in regard to the various questions which I have asked you? A. Yes, sir.

Q. With particular reference to the statement made by one of the Democratic Senators who voted against the bill, and so forth, as under date of April 8th? A. Yes, sir.

PATRICK P. RELIHAN, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Relihan? A. Brooklyn, sir.

Q. What is your business? A. Newspaper reporter.

Q. Connected with what paper? A. New York Press, at present.

Q. Were you the Albany correspondent of the New York Press during the regular session and the extraordinary session in 1908? A. I was.

Q. And what was the attitude of your paper with reference to race-track legislation? A. Well, the attitude of my paper generally, editorially, was that the reform was not worth while. They were rather against it, the alleged reform, I might say.

Q. But you, as a newspaper correspondent from Albany, wrote the news from Albany, without any reference to the attitude of your paper, did you not, that is, with reference to the facts just as they were? A. Just about as I found them, or thought I found them, yes.

Q. Did you read the evidence given by Assistant District Attorney Elder of Kings county yesterday, with reference to a conversation which he had had with Mr. Gardner in the spring of 1910, in which he said that Mr. Gardner stated to him that he had paid you certain moneys at the time of the pendency of this bill in the Legislature? A. I had that paragraph read to me; I did not read it.

Q. And you wish to make a statement, do you, Mr. Relihan, in reference to the matter? A. Yes, I would like to say that it is absolutely untrue, wholly untrue, that Mr. Gardner never gave me anything; I do not remember of him ever giving me a bit of news when he was Senator, and I did not see him at the time, and I had no communication with him, good, bad or indifferent.

Q. During the regular session or the extraordinary session of 1908, did you see Mr. Gardner in Albany? A. I do not think I did; my recollection is pretty distinct that I did not.

Q. Did you see Mr. Hyde there? A. I saw Mr. Hyde at a hearing.

Q. I mean other than at the public hearing at which he was present? A. I did not.

Q. Then, of course you had no conversation with Mr. Gardner, if you did not see him? A. I certainly had no conversation with Mr. Gardner.

Q. Did you interview Senator Gardner in New York, or else-

where than in Albany, or have any conversation with him during the pendency of these measures? A. No, sir.

Q. I have not had the opportunity of looking at the files of your paper, Mr. Relihan, for the purpose of trying to refresh your recollection with regard to any matters of news which you had written from Albany, but I would like to ask you generally, did any Senator, in any of your conversations with them, state to you that they had been approached with reference to their vote upon the measure? A. No, sir; my best recollection is that no Senator did.

Q. Did any person who was in Albany in opposition to the bill, make any statement to you in regard to the use of any money or valuable thing, for the purpose of defeating the measure? A. No, sir.

Q. Or did any person make any statement of the use of any money for the purpose of the passage of the bill? A. No, sir, they did not.

Q. Or did any Senator say that he had been approached with reference to his action in favor of the bill? A. No. That he had been approached by somebody who wanted him to vote for the bill?

Q. Yes, I asked you in regard to those who were voting against the bill; now I will ask you in regard to those who were voting for the bill? A. No, sir; no Senator did that.

Q. I don't know but what I used the word "Senator;" allow me to use the word "legislator" which would also include the Assemblymen. Would the same answer apply? A. The same answer would apply exactly.

Q. Let me ask you the general question, Mr. Relihan, did you ever receive any information from any person, Senator or Assemblyman, at Albany or elsewhere, with reference to the use of any money, either for the purpose of aiding in the passage of the bill or the defeat of the bill? A. No, sir.

Q. Do you recall whether or not, in writing the news from day to day to your paper, you gave the rumors or impressions with regard to methods which were being adopted for the purpose of defeating the measure? A. I remember that I did report the rumors of the impression that there was a lobby up there for the

purpose of defeating the bill, and that money was supposed to be used, or would be used for that purpose.

Q. After I have the opportunity, Mr. Relihan, of looking through the files of your paper, in order that I may be able to refresh your recollection as to what was written from day to day, or if you can recollect, by looking through your papers, or have your recollection refreshed, will you, if necessary, attend again and allow me to examine you with reference to the items? A. Yes, sir.

Q. As I did Mr. Seibold, because I happened to have his, being published in the World? A. Yes, sir. I will.

Q. You were acquainted with Senator Gardner? A. Yes, sir.

Q. You were the Albany correspondent of the New York Press at the time he served in the Senate? A. I was, sir.

Q. In 1905 and 1906? A. Yes, sir.

Judge BRUCE: That is all, Mr. Relihan.

GEORGE J. JANVRIN, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Janvrin? A. 302 Westminster Road, Flatbush.

Q. What is your business? A. Albany correspondent of the Brooklyn Citizen.

Q. Were you the Albany correspondent of the Brooklyn Citizen in 1908? A. I was.

Q. During both the regular session and the extraordinary session? A. I was.

Q. You have read the evidence, have you, given by Assistant-Attorney Elder? A. Yes, sir.

Q. Yesterday? A. Yes, sir.

Q. And the statement which he testified to, that it was made to him by Mr. Gardner with reference to his having paid you certain moneys in Albany, or paid you certain moneys in relation to your work in connection with the Legislature that year? A. Yes, sir.

Q. And you wish to make a statement, do you? A. It is not true.

Q. Is that all you wish to say? A. That is all.

Q. How long had you known Senator Gardner? A. I had known Senator Gardner for about fifteen years.

Q. Did you see Senator Gardner in Albany, during either the special or the regular session of the Legislature in 1908? A. I did.

Q. And where did you see him? A. I saw him on the street, on State street one morning about one o'clock; I saw him later at the Hampton Hotel.

Q. Were those the only two occasions on which you saw him? A. The only two.

Q. Do you recall whether that was during the regular session or the extraordinary session? A. Not at the moment, I do not.

Q. Now, when you saw him first on the streets of Albany, some time after one o'clock in the morning, did you have any conversation with him? A. I did not.

Q. When you saw him later, was it after that, that you saw him at the Hotel Hampton? A. Yes, sir.

Q. Just give us the circumstances and all that occurred at the time you saw him at the Hotel Hampton? A. The day of the morning that I met him at one o'clock, I went to the Hampton Hotel and went to Senator Gardner's room in pursuit of my duties as a correspondent, he having been the Brooklyn Senator previous to that, and having been a Republican district leader in Brooklyn, I went to his room to ask what he was doing in Albany, or if there was any news that I could get from him.

Q. Now, if I may just interrupt right there, what time of day was this, do you recall, Mr Janvrin? A. I think it was the morning, but I am not certain about it, but I take it that it was in the morning.

Q. Where did you find him at the Hampton? A. One of the upper floors, I am not sure which.

Q. And you went up to his room, did you? A. I was escorted to his room by a bell-boy.

Q. When you entered his room, whom did you see there? A. I saw Mr. Gardner.

Q. Anyone else? A. No one else.

Q. Then whatever occurred between you and him at that time, there was no one else present? A. No one else present.

Q. Just go on and state what occurred? A. We shook hands and exchanged some commonplaces. I believe he asked what was going on up on the hill, and I made some commonplace reply, and before I could get down to asking him anything about his presence in Albany, or make any inquiries, as I might as correspondent, a door leading into the room was opened and Mr. Gardner was called by his first name.

Q. That is, a door leading from the room into which you and he went into another room? A. Yes.

Q. Not out into the hall? A. Not out into the hall, no, leading into another room; he was called by his first name, and went to the door, stepped into the room, came back again to me, and asked me to remain until he should come back, that he had some business to attend to, and he said, "Now, I don't want you to go until I come back;" and I waited, my recollection is, something like half or three-quarters of an hour; it was quite a long wait; when Senator Gardner came back, I felt resentful for having been left there waiting, because of my knowledge of Senator Gardner, and my associations with him in Brooklyn as a newspaper man, and he as a politician covering a number of years, and I told him that I was not accustomed to being left like that, and I did not like it, and he said something to me about not getting excited about it, and I said, "Well, I have got my business to attend now." He says, "I want to have a talk with you now," and I said, "I cannot talk with you now, I have got to get up on the hill," and I left.

Q. Did you see him after that? A. No, I have seen him since then, but not in Albany.

Q. I mean, did you see him in Albany during either the regular session or the special session, on any occasions other than the two which you have mentioned? A. No.

Q. How did you know that he was down at the Hampton, how did you ascertain that fact? A. I made inquiries.

Q. Do you recall whom? A. I inquired at the Ten Eyck, and someone, I don't know whom, I think overheard me make the inquiry at the Ten Eyck, and said, "Why, Gardner is down at the Hampton," and said he had been there for two weeks.

Q. When you went up to see him, was he in this first room all alone? A. Yes, sir.

Q. Just describe that room, what was in it? A. To the best of my recollection it was a room with two windows, and the impression of it is left on my mind from the fact I remained so long, and the position I sat. It was a room with two windows; a table between the windows; and while I waited, I sat at the side of the table near one of the windows. There was a door entering into the room a little to one side of the side opposite to the windows, and then the bed and the door leading into the opposite room.

Q. Do you remember the number of the room? A. I do not.

Q. Do you remember the floor it was on? A. I do not.

Q. When the door opened and someone called him, did you recognize the voice? A. I did not.

Q. Did you see the person? A. I did not.

Q. Did you see any person in the other room? A. No, sir.

Q. When he went in the other room, did you hear voices? A. No, sir.

Q. When he went in the other room, did someone greet him? A. That I do not know.

Q. What I wish to ascertain is whether or not there was more than one person in the other room when he went in, if you could tell from the voices? A. From my knowledge I don't know; I merely assumed that he was brought in there to meet another person from what he said when he came back; he told me that he had some business to attend to.

Q. Now, did you see Senator Gardner, or have any conversation with Senator Gardner, during the pendency of these measures in the Legislature, at any other place than Albany? A. I did not.

Q. Did you see Mr. Hyde in Albany at any other time, except when he was there, attending the public hearing, Charles H. Hyde? A. You mean during the period that this legislation was up?

Q. Yes. A. I did not.

Q. What was the attitude of the paper which you were representing with reference to the race-track legislation? A. Very much in favor of the bill.

Q. It carried on, did it, a vigorous campaign in favor of the bill? A. Editorially, in favor of the bill.

Q. I presume you wrote the news as you found it? A. I did.

Q. I have not had the opportunity of looking over the files of your paper, for the purpose of refreshing your recollection, as I had with Mr. Seibold on account of the extracts having been printed in the *World* of this morning, so far as his communications were concerned, but let me ask you during the pendency of these measures, at the regular session or at the extraordinary session, did any member of the Legislature of either house state to you that he had been approached by anyone improperly; that is, by that, I mean by the use of money or any valuable thing or political promotion, or otherwise, for the purpose of influencing his action upon the measure? A. No, sir.

Q. Do you know of the use of any money or valuable thing by any person either in favor of, or in opposition to this measure, at either session of the Legislature of that year? A. Of my own personal knowledge?

Q. Yes. A. No.

Q. Did you have any conversation with any person who was there representing those who were in opposition to the bill, with reference to the use of any money or valuable thing for the purpose of defeating the measure? A. I have not.

Q. Did any person representing either those who favored the bill, or those who were in opposition to the bill, state to you that any money was being used for the purpose of defeating the bill or passing the bill? A. No, sir.

Q. Now, did you have any information with reference to the use of money either to pass this bill or defeat it, other than from your own knowledge? A. What I meant when I made that distinction, that I have been reminded of it, was this: there was a general understanding and gossip and talking going on at Albany, as there was in the papers throughout the State. I had that knowledge and no other.

Q. What I have reference to, either by own knowledge or any statement made by you of any person who claimed to have knowledge of the use of money. After I have an opportunity of looking through the files of your papers, or if you will look through the files yourself to see the news items that you wrote from time to time during the pendencies of this measure, which will in any

wise aid your recollection, or refresh it, I presume you will return and testify again, Mr. Janvrin? A. Very gladly.

Judge BRUCE: That is all. If there is any other person present, whose name was mentioned in the evidence yesterday in which it was stated that he had received money for his action in relation to this bill, and wishes to make a statement in regard to it, and he will come forward, he may have an opportunity of doing so.

HARRY A. SYLVESTER, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. 189 St. Marks avenue.

Q. In what city? A. Brooklyn.

Q. What is your business? A. Clerk of the Board of Elections, city of New York.

Q. How long have you held that position? A. January 1st, 1908.

Q. Prior to that time, what was your occupation? A. Secretary to Senator Gardner.

Q. How long were you secretary to Senator Gardner? A. From the time of his election as executive member; I think it was in 1899 or 1900; to January 1st, 1908.

Q. When did you last see Senator Gardner? A. I do not recall; I think I saw Senator Gardner but twice in three years.

Q. When did you last communicate with him? A. I had no communication with him.

Q. Has he communicated with you? A. He has not communicated with me.

Q. Has anyone communicated with you on behalf of Senator Gardner? A. No, sir.

Q. Now, since you ceased to be his secretary, which I understand you to say was on January 1st, 1908 — A. Yes.

Q. Have you done any work for Senator Gardner? A. No, sir.

Q. Of any kind whatsoever? A. No, sir.

Q. Were you in Albany during either the regular or extraordinary session of the Legislature in 1908? A. No, sir.

Q. Did you see Senator Gardner during the regular or extraordinary session of the Legislature of 1908? A. I did not see him.

Q. Did you have any communications with him? A. None that I can recall.

Q. Did you know of the presence of Senator Gardner in Albany during the regular or extraordinary session of 1908? A. Except what I could pick from the newspapers; they all had it.

Q. Did you have any conversations with anyone in Brooklyn with reference to Senator Gardner's presence in Albany, or his work, or activities there? A. I do not recall any conversation I had with anyone.

Q. Did you convey any messages in writing or otherwise, from Senator Gardner, to any persons in New York or Brooklyn, during the regular or extraordinary session of the Legislature of 1908? A. No, sir.

Q. Who succeeded you as secretary to Senator Gardner? A. I do not think he had any.

Q. He was a member of the Senate during what years, do you recall? A. 1905 and 1906; elected in 1904.

Q. What were your duties after 1906, as secretary to Senator Gardner? A. I attended to the correspondence in the office, looked after some of the legal work of his clients; did a great deal of the typewriting.

Q. Are you a member of the Bar? A. No, sir.

Q. Are you a stenographer or typewriter? A. Typewriter; no stenographer.

Q. Where was Senator Gardner's office during the time that you were his secretary? A. Well, 44 Court street, Temple Bar Building.

Q. And was his office there at the time you ceased to be his secretary? A. Yes, sir.

Q. Did you know that he, subsequently or prior to that time, had an office in 42nd street, New York? A. No, sir; he had no office at 42nd street, New York, that I knew of.

Q. Did you know of his having an office in any other street in the city of New York? A. When?

Q. At the time you were his secretary, or subsequently? A. He had no other office while I was his secretary, except 44 Court street.

Q. Did you know, or learn, that he subsequently had an office in 45th street, in New York city? A. I knew that afterwards, yes, sir.

Q. When did you first learn that? A. Why, I knew that he was going to New York.

Q. How did you know it? A. He told me he was going to New York.

Q. What did he say? A. He said that he was going to New York to practice law.

Q. Was that all that he said? A. That is all that I can recall that he said to me.

Q. Did he say that he was going to New York to do anything else besides practice law? A. No, sir.

Q. Did he have any other business in Brooklyn besides the practice of law, while you were his secretary? A. I cannot recall any other business that he had.

Q. Do you know of any other business that he had subsequent to the time that you were his secretary, other than the practice of law? A. He was a Deputy Commissioner of Jurors.

Q. When was he Deputy Commissioner of Jurors? A. All of 1904 — he was elected in 1904, the fall of 1904; he served as Deputy Commissioner of Jurors, I think, in 1904, and 1903, and I am not certain whether he was in 1902. Previous to that, he was the chief clerk of the Coney Island Court, but I do not recall what years they were.

Q. When did he remove his office from 44 Court street to New York city; that is, to Manhattan? A. I don't know.

Q. What was the number of his office in New York city, in Manhattan? A. In Manhattan?

Q. Yes. A. I don't know the number; you mean the number of his office?

Q. Yes. A. I don't know.

Q. Don't you know where his office was in New York? A. No.

Q. When did he remove from 44 Court street? A. I cannot say.

Q. Was it subsequent to the time that you were his secretary?

A. No.

Q. Prior to that time? A. Oh, subsequent, yes.

Q. Do you know how long subsequent? A. I cannot say.

Q. Did you ever visit his office in Brooklyn or in New York after you ceased to be his secretary? A. Yes, in Brooklyn.

Q. Which office? A. Brooklyn.

Q. Did you visit his New York office? A. Not that I remember; no, sir, I do not recall visiting his office.

Q. How long after you ceased to be his secretary did you visit his Brooklyn office? A. Well, I cannot say; on and off, I used to run upstairs, because the office of the Board of Elections in Brooklyn was in the same building with the office which we had; the Board of Elections was on the 4th floor, and the other was on the sixth.

Q. Then don't you know when he removed his office? A. No, I haven't the slightest idea.

Q. How long subsequent to the time you were his secretary? A. I cannot say.

Q. A month? A. I cannot say.

Q. Two months? A. I don't know.

Q. A year? A. I cannot say.

Q. Pause a moment and perhaps you will be able to refresh your recollection and say; you had been his secretary for how many years? A. Since about 1900.

Q. And when you assumed the position you now occupy, the offices of the Board of Elections was in the same building where his offices were? A. Yes, sir.

Q. Now, just pause for a moment and see if you cannot recall within a year, when he left his office in that same building? A. I haven't the slightest idea.

Q. I know you haven't now, but search your recollection and see if you could not refresh it, because it seems to me most extraordinary, if you had been his secretary for eight years, and that afterwards you went to call in the same building, that you could not tell within a year when he left that building, although it has been since January 1st, 1908, which is only two years ago? A. I do not remember whether he moved out in January, February, March or April; I cannot say.

Q. You told me you could not tell within a year; now we have got down to three months? A. I cannot tell.

Q. Do you think it was any later than April, 1908? A. It may have been in May, I don't know; it may have been in January.

Q. It may and it may not; I am asking for your best recollection. A. That is my best recollection.

Q. Do you think it was before April, or after April, 1908? A. I don't know.

Q. What is your best recollection as to that? A. I cannot recall it.

Q. What is your best recollection? A. It may have been January; it may have been February; it may have been March; and it may have been April or May.

Q. Yes, that is all very true. A. The lease expired in May.

Q. That gets it down to within at least four months; he did not renew his lease, did he? A. I don't know; I don't suppose he did. He was not in the building after that.

Q. He was not in the building? A. No.

Q. Then we have got your time down to four months? A. I know he moved in 1908.

Q. And you now know that he moved prior to June 1st, 1908? A. He must have done that, or been put out.

Q. That is some progress we are making? A. Yes.

Q. Now, see if you can search your recollection a little further; do you think it was before April 1st, or was it as late as May 1st? A. I cannot say.

Q. What would be your best recollection? A. Between January 1st, 1908, and between May 1st, 1908.

Q. When did you last see him in the building between those dates? A. I did not see him in the building.

Q. You did not see him in the building from 1908, from January 1st, to the first of May? A. No.

Q. If I recall your evidence correctly, my recollection of it is, in April you said you frequently ran up to his office? A. Yes, sir.

Q. After you ceased to be his secretary? A. Yes, sir.

Q. Then did you see him in your office? A. No.

Q. Never saw him in his office? A. No; I would get there late in the afternoon or early in the morning.

Q. When was the last time you visited his office at 44 Court street? A. I don't know.

Q. What is your best recollection; of course you want to be entirely frank. There isn't any reason why you should not be if your recollection is refreshed. A. Positively honest with you, Mr. Bruce.

Q. That is what I understand, although I understood Mr. Kresel to say you would not give him any information as to what you knew about Senator Gardner after January 1st; you said you would have to be called. A. He asked me for information; I don't know why I should give Mr. Kresel information; I am giving it to you now.

Q. That is what I understand, and that is the reason I have you on the stand now. A. Yes, sir.

Q. Now, assuming you wish to be entirely frank, please tell me when was the last time you visited his office at 44 Court street? A. I don't remember, Mr. Bruce.

Q. What would be your best present recollection? A. I cannot say; I haven't any idea.

Q. Now, you remained his secretary until January 1st. Did I ask you who succeeded you to the position? A. You asked me, Yes, sir.

Q. Do you recall? A. I don't know of anyone.

Q. Who performed the services that you rendered in his offices, after you left? A. I don't know.

Q. When you were up there, whom did you see in his offices at work? A. Why, I don't know; I think there was an office boy; I would not be certain.

Q. Who succeeded you as office boy? A. Nobody succeeded me as office boy.

Q. Who was his office boy after you left? A. I don't know.

Q. Whom did you see there performing the duties of office boy? A. There was some boy there; I don't know.

Q. What was your salary when you were office boy? A. I was not office boy.

Q. You said you were practically office boy; what was your salary? A. I was getting \$25 a week.

Q. And the office boy succeeding you at \$25 a week was at another salary? A. I don't know.

Q. Who performed the duties after you left, that you were performing before you left? A. I don't know.

Q. Whom did you see there performing those duties or performing any duties? A. I don't know.

Q. When you visited his office from time to time in 44 Court street, after you left as secretary, whom did you see in his office?

A. I saw a boy there.

Q. What was his name? A. I don't know now.

Q. How old was he? A. A small boy; I suppose about fifteen.

Q. Was he the one that succeeded you? A. I don't know; he may have.

Q. Do you know what his name was? A. No.

Q. Do you know where he lives? A. No, sir.

Q. How long did he remain with him? A. I don't know.

Q. Was he with him when he moved his office? A. I cannot tell you that.

Q. Did he have anyone else there? A. No, sir.

Q. Did you see anyone else there? A. No, sir.

Q. Never saw anyone else there at any time, except the office boy? A. That is all.

Q. Do you know Henry J. Goldsmith? A. No, sir.

Q. A lawyer in Manhattan? A. No, sir.

Q. Do you know Charles H. Hyde? A. No, sir.

Q. Did you have access to Senator Gardner's office after you left as his secretary? A. I had a key to it.

Q. How long did you retain the key? A. I think I have got it yet.

Q. And did you go to his office from time to time when he was not there, or anyone else? A. Yes, sir.

Q. For what purpose? A. I would go in there to use the type-writing machine at times.

Q. For what other purpose, if any? A. Possibly sit there, and make an appointment with some political friends.

Q. Then you had to use the office after you left, did you? A. Oh, yes; I used it; I don't know whether I was entitled to use it; I used it.

Q. How long did you continue to use it? A. Not very long.

Q. About how long? A. Only part of January, I think and part of February; after that I do not think I went near the office.

Q. You were not in his office after January? A. I don't think I went near it after January or February; I can't say.

Q. Are you positive about that? A. I am not certain about it, no.

Q. You might have visited it later than that? A. Possibly; I don't know.

Q. Why didn't you surrender the key to the office? A. The key belonged to me.

Q. The key belonged to you? A. Yes; I bought the key and it belonged to me.

Q. You did not pay any rent of the office, did you, contribute towards the rent? A. No.

Q. If, by any possibility, your recollection should be refreshed in regard to any of these matters as to which it now seems to be so vague, will you kindly let me know in order that you may be recalled? A. Yes, sir.

Judge BRUCE: That is all.

JOSEPH F. McENTEE, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q Where do you reside? A. Albany.

Q. What is your business? A. Newspaper correspondent.

Q. In connection with what paper? A. The Sun and Evening Sun.

Q. How long have you been the Albany correspondent of the Sun? A. I think since 1896, 1897 or 1898, one of those three years.

Q. You were the Albany correspondent during the regular session and special session of 1908, were you? A. Yes, sir.

Q. Have you read the evidence given yesterday by Assistant District Attorney Elder, with reference to a conversation which he had with Senator Gardner, in which he stated that he had paid you certain sums of money in 1908? A. Yes, sir.

Q. Do you wish to make a statement in regard to it? A. Simply that so far as Mr. Elder's statement concerns me, I know nothing about it, and deny it absolutely. The first I knew of it was reading it there.

Q. Now, what was the attitude of the Sun with reference to the race-track bills? A. I think that from the start both Suns were against that class of legislation.

Q. But you, as the correspondent of the Sun, wrote the facts as you found them, did you? A. Oh, yes.

Q. Did you see Senator Gardner in Albany during either the regular session or special session of the Legislature in 1908? A. No, sir.

Of course, if you did not see him, you did not have any conversation with him? A. I could not.

Q. Did you know of his presence in Albany? A. Only by hearsay; that is, as I read it in the papers.

Q. That he was there? A. Yes; I don't know that he was ever discussed; I did not know it in any other way than reading about it.

Q. Did you see Mr. Charles H. Hyde there at any time, other than when the public hearing was had upon the race-track measure? A. I never saw Mr. Hyde in Albany.

Q. It has been stated here that he was present at the time of the large public hearing; I did not have reference to that date? A. If he was present at that hearing, I did not see him to know who he was.

Q. Did you have any conversation at any time with Mr. Gardner during the pendency of that legislation, at any other place than Albany? A. No, sir.

Q. Or with Mr. Hyde? A. No, sir.

Q. During the pendency of this legislation, either at the regular session or the extraordinary session, did any Senator ever state to you that he had been approached with reference to influencing his vote for a consideration, either in favor or against the measure? A. No, sir.

Q. Did any Assemblyman ever make any such statement to you? A. No, sir.

Q. I used the word Senator before; did any person in Albany

who was there either in favor of the bill or against the bill, ever state to you that he knew that any money was being used either for the purpose of defeating or promoting legislation? A. No, sir.

Q. Did any person in Albany, or elsewhere, ever state to you at the time the legislation was pending, or since, that he knew of his knowledge, that the use of any money either for the purpose of promoting the legislation or defeating it, was being had? A. No, sir. By that I don't mean to say that I did not have any idea there was no money, because my experience — the idea of preventing the passage of the bills, the fact there was any such attempt — I did not know about it except as I might have surmised there was, the same as you draw little conclusions from things that happen with you.

Q. You mean by that, gossip and rumors going around the Capitol? A. Yes, I heard the same gossip that everybody that touched the lobby did, I suppose, like everybody else did, but like everything else, when you go to try to get the particulars so you can write about it, there is nobody there that knows anything about it; continuously rumored.

Q. Now, I have not had an opportunity, Mr. McEntee, of examining the files of the Sun for the purpose of refreshing your recollection in relation to any news items which may have been written at that time, as I did with Mr. Seibold, who represented the World? A. As I recollect, the files of the Sun were used by those who opposed the bills as reasons why they should not pass, that is, the editorials.

Q. I haven't reference to the editorials, but to facts which you may have written from Albany, which possibly, if I had them present, might refresh your recollection; after I have an opportunity of going through the files of your paper, as with other papers, and am able to refresh your recollection, I presume you are willing to return and testify, are you not? A. Oh, yes.

Q. Anything further you have to say? A. I don't know of anything, except the statement that I said before, that the first news I had of it was reading it in the papers this morning, and I thought I would come along; I saw your little paragraph inviting anybody to come who desired, and I thought I would include myself in it.

Q. I understand your statement to be that he did not pay you three thousand dollars, or any other sum? A. No, sir.

Q. Is that correct? A. Yes, sir.

Judge BRUCE: Is there any question any member of the Committee has to ask?

Chairman MERRITT: No.

Judge BRUCE: That is all the witnesses I have been able to secure in regard to the race-track proposition for this morning. Subpoenaes which we have issued, a number of them, have not been served. Therefore, it will be necessary to proceed with another branch of the investigation, to wit, the investigation which was carried on by the Senate last winter, and I propose starting upon that now. The witness who I will first call will be a long witness, that I will not possibly exhaust between now and the time for recess, and I would suggest to the Committee that we take a recess now, rather than in the midst of my examination.

Chairman MERRITT: The Committee will stand in recess until 2 o'clock.

Recess until 2 o'clock.

AFTER RECESS.

2 P. M.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Senator Conger.

Senator BENN CONGER, called and sworn as a witness, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Senator? A. Staatsburgh, New York.

Q. How long have you resided there? A. All my life.

Q. What is your age? A. Fifty-three.

Q. What is your business? A. Manufacturer and merchant.

Q. Have you been engaged in that business all your business life? A. Yes.

Q. Have you never held public office? A. Yes, sir.

Q. What public offices have you held? A. I was a member of the Assembly—I was Assemblyman in 1901 and Senator in 1909 and 1910.

Q. Have you ever held any office other than that of Member of the Assembly and Senator, as you stated? A. Nothing, except local offices at home, like a member of the school board, village trustee, or something of that kind.

Q. With what corporations have you been connected as an officer? A. With the firm of C. W. Conger & Company, a mercantile firm, with the Broughton Bridge Company, with the Monarch Road Roller Company, the Boston Bridge Works, and the Canton Bridge Works.

Q. What was your position in each of these companies? A. Some I have been a director in; some I have been vice-president.

Q. Will you designate the position you held in each one of them in the order in which you have enumerated them? A. I was vice-president of the C. W. Conger & Company.

Q. For how long? A. Since its organization; that was in 1901.

Q. Is it still in existence? A. Yes, sir.

Q. And you still hold that position? A. Yes, sir.

Q. Now, take up the next company? A. I was a director in the Broughton Bridge Company. I cannot recall just when that was; but my impression is in 1904 and 1905. I became vice-president, I think, in 1907.

Q. Do you still hold that position? A. Yes, sir.

Q. Now, the next company, the Boston Bridge Works? A. I was director and vice-president of that since 1902.

Q. And you still hold those positions? A. Yes, sir.

Q. Now, what about the Monarch Road Working Machine Company? A. I am a director and vice-president.

Q. And how long have you held those positions? A. I think for the past two or three years; I am not sure about that, Judge; it is a short time.

Q. My purpose in examining you, is to develop and go into all matters relative to legislative corruption shown or suggested by the record in the Senate trial, known as "The matter of the investigation demanded by Senator Jotham P. Allds," and the con-

current resolution creating this Committee which gives it its power, and under which it acts, provides: "That a joint committee of three Senators be appointed by the President of the Senate, and five members of the Assembly to be appointed by the Speaker of the Assembly is hereby constituted and appointed a legislative committee to investigate as speedily as possible all corruption and corrupt practices, shown to exist by the evidence in the recent investigation had before the Senate of the State of New York." And then follows the other matters concerning which investigation is to be made. Were you present, Senator, at all the hearings in the proceedings of the Senate in the matter of the investigation demanded by Senator P. Allds? A. I don't think I was at all of them; no, sir

Q. You were present, were you not, at most of the hearings? A. Yes, sir.

Q. And were you not present at the time when your counsel, Mr. Osborne, opened the case? A. Yes, sir.

Q. You, of course, conferred with Mr. Osborne and your other counsel at length before the case was opened? A. Yes, sir.

Q. And you told Mr. Osborne, did you not, and your other counsel, all you knew concerning the transactions surrounding that bridge bill, so called, in 1901? A. I think so, as I can remember.

Q. So far as you can recollect? A. Yes.

Q. Now, before proceeding with the examination in regard to the transactions themselves, let me see whether or not I can correctly state the situation with reference to these bills. Two bills were introduced by Mr. Malby, in the Senate, in 1901, relative to extraordinary repairs to highways and bridges, and the method of raising money for that purpose; one on January 25th. and one on April 1st; isn't that correct, excepting probably as to the dates which I will supply from the records? A. Yes. I don't know the dates.

Q. Now, the first bill related to the making and letting on contracts by town authorities for the extraordinary repairs of bridges, and the second simply amended the general election laws relative to the provision for raising money for this purpose? A. Yes, I understand so.

Q. Now, the first bill was of great significance to the bridge companies, wasn't that true? A. Yes.

Q. And the second bill was of practically no consequence? A. That is not hardly true, because it qualified the people who should vote on it, if the first bill passed, the second one was of great importance.

Q. But the bill which was of primary importance to the bridge interests was the first bill, was it not? A. Yes, sir.

Q. The second bill simply provided that in case the first bill became a law, the manner of voting, and who should vote with reference to appropriations to be expended for town purposes? A. Yes sir.

Q. Now, two bills identical therewith were introduced by Mr. Stevens in the Assembly, were they not? A. Yes.

Q. Mr. Stevens represented the county of Franklin in the Assembly, which was one of the counties constituting the senatorial district which Mr. Malby represented? A. As I remember it; yes, sir.

Q. Now, one of these bills having been introduced on January 28th, and the other by Stevens on March 29,—that is, the Stevens bills were introduced in the Assembly on January 28th and March 29th,—I shall supply the information later from the records—now, is it not true that Mr. Malby's first bill was introduced January 25th, 1901, and was entitled, "An Act to amend the Highway Law relative to extraordinary repairs to highways and bridges," having Senate number 2713; it was on that day read the first time, and by unanimous consent read the second time, and referred to the Committee on Judiciary; and in order to refresh your memory as to whether or not I am correct I call your attention to page 134 of the Senate Journal of the 124th Session, 1901, Volume 1. (Hands book to witness.) My statement is correct, is it not? A. As I remember it; yes, sir.

Q. As it appears by the Journal which you hold in your hand, isn't it? A. Yes.

Q. Now, again referring to page 442 of the same volume, is it not true, that on February 1st the chairman of the Committee on Judiciary reported in favor of the passage of the bill, which report was agreed to, and the bill committed to the Committee of the Whole; that is correct, is it not? A. Yes, it is so stated.

Q. Referring now to page 513 of the same volume, it is true, is it not, that on February 27 the chairman of the Committee on Printed and Engrossed Bills certified the bill as correctly printed? A. Yes, sir.

Q. And referring to page 517, on February 27, the bill was read the third time, placed upon its final passage, and passed by a vote of 42 to 2, and the clerk ordered the bill to be delivered to the Assembly, and requested their concurrence therein; isn't that correct? A. It is right according to the record.

Q. You have thus far referred to the progress of this bill in the Senate. Now, referring to page 1143, Journal of the Assembly, being Volume 2, for the 124th Session, 1901, it is true, is it not, that the bill was received in the Assembly February 28th, and given number 292, reception number 123, was read the first time, and referred to the Committee on Internal Affairs? A. Yes, sir.

Q. Now, referring to page 3207, being in Volume 3 of the Assembly Journal for the same session, it is true, is it not, that on April 8th the chairman of the Committee on Internal Affairs, to which the bill had been referred, reported the same to be reprinted and recommitted, with a number of amendments; is that correct? A. Yes, sir.

Q. And among these amendments was a provision striking out the words "\$500.00," and inserting "\$2,000.00;" look at that and see if that is correct? A. Yes, sir.

Q. Thus raising the cost of a repair which would require a contract to be let in writing, to be in writing, and let by competitive bidding, from \$500.00 to \$2,000.00; is that correct? A. It seems to be; yes, sir.

Q. That is correct? A. Yes, sir.

Q. And also striking out the words "\$2,000.00," and inserting the words "\$10,000.00," thus raising the cost of a repair which would require the approval of the State Engineer, and the vote of the people, from \$2,000.00 to \$10,000.00? A. Yes.

Q. Now this report was agreed to, was it not, by the Assembly, that is, these amendments? A. Yes, it is so stated.

Q. But Mr. Stevens immediately moved to reconsider this vote by which the report was adopted, and this motion was carried, was it not? A. Yes, sir.

Q. Thus the Assembly having adopted the report of the committee making these amendments, immediately, upon the motion of Mr. Stevens, reconsidered its action, and really defeated the amendment; is that not correct? A. Yes, sir.

Q. And Mr. Stevens then moved that the bill be recommitted to the Committee on Internal Affairs, which prevailed; is that correct? A. Yes.

Q. In other words, the bill went back to the committee in precisely the same form in which it came out of the committee? A. Yes.

Q. Now, taking up Mr. Stevens other bill, referring you to page 229 of Volume 1 of the Assembly Journal of the session of 1901, it is true, is it not, that on January 28, 1901, Mr. Stevens introduced a bill in the Assembly entitled: "An Act amending the highway law relative to extraordinary repairs to highways and bridges," introductory number 458? A. Yes, sir.

Q. Which was read the first time and referred to the Committee on Internal Affairs? A. Yes, sir.

Q. This bill was identical with Malby's bill, which was introduced in the Senate on January 25th, was it not? A. I so understand it, yes, sir.

Q. Now, referring to page 850 of the same volume, it is true, is it not, that on February 20th the chairman of the Committee on Internal Affairs reported the bill with a number of amendments, among which was the provision that any contract for the expenditure of more than \$500.00 for extraordinary repairs on highways and bridges must be on the vote of the people, and should be in writing, and publicly let by the town board, after advertising, and requested that said bill be so amended, and recommitted to the committee, is that not correct? A. That is right.

Q. And this request was agreed to? A. Yes, sir.

Q. These two bills, which, when introduced, were identical, provided that no bridges should be built or repaired by a town at a cost of \$1,000 or more, without the State Engineer first certifying to it as a necessary? A. Yes.

Q. And also provided that hereafter in the event that the cost exceeded \$2,000 that the people should vote on it, and as

amended that whenever the cost was over \$500 the contract should be in writing, and publicly let, is that correct? A. Yes.

Q. Therefore, is it not true, that we have seen,— that it appears that the Committee on Internal Affairs of the Assembly reported the Stevens bill of February 20th, 1901, was amended that if the repairs were more than \$500, people should vote on it and the contract should be in writing and publicly let, after advertisement? A. Yes, sir.

Q. Now, on April 8th, the chairman of the Committee on Internal Affairs again reported the bill, with numerous amendments, and asked that the same be adopted and that the bill be reprinted and recommitted to the committee; and among these amendments was one changing the provision that any repair costing over \$500 should be in writing and publicly let, after advertisement, to \$10,000; and also providing that it was not necessary to have the approval of the State Engineer or the vote of the people on any repair costing less than \$10,000; that is correct? A. Yes, sir.

Q. Now, the situation then was that the Committee on Internal Affairs in the Assembly — that before the Committee on Internal Affairs in the Assembly there was both a Senate bill — that is, the Malby bill,— and Assemblyman Stevens' bill; that committee had them both? A. Yes.

Q. The Malby bill, in the form it then was, was against the bridge companies, wasn't that correct? A. Yes.

Q. And the Stevens bill, as amended and recommitted, was favorable to the bridge companies, is that correct? A. Well, yes.

Q. In other words, these bills had so been reported and so amended that finally, at that time, the Assembly committee held two bills; one favorable to the bridge interests, and the other against the bridge interests? A. Yes, sir. I would like to say right here that the Stevens bill, as amended, while not exactly favorable to the bridge interests, as a present law, it was better than the Malby bill; it was a compromise measure, you might say.

Q. Now, no further action was taken by the Assembly on either one of these bills, was there? A. No, not as I remember.

Q. And when the ten days before final adjournment came around, under the rules of the Assembly, the calendar passed to the control of the Committee on Rules? A. Yes.

Q. So that the Committee on Internal Affairs had no further — as a committee, had no power after that time to report the bills out; that is correct, isn't it? A. Yes.

Q. Now, going back to the bill which was introduced in the Senate by Mr. Malby and in the Assembly by Mr. Stevens, which had only to do with the manner of voting the appropriation, on April 1st, 1901, Mr. Malby introduced in the Senate a bill entitled, "An Act to amend the town election law relative to provision for raising money for town purposes;" and on March 29th, 1901, Mr. Stevens introduced a bill — Assembly Bill No. 1551, and Mr. Malby's bill being Senate Bill, introductory No. 949 — Mr. Stevens introduced a similar bill in the Assembly; is that your recollection, except as to dates? A. Yes, sir.

Q. Now, these bills made provision as to the manner in which a town should vote on any proposition to raise money, or to appropriate money, but to incur no liability exceeding \$500; is that your recollection? A. Yes, sir.

Q. The Malby bill passed the Senate on April 9th, and was sent to the Assembly for concurrence; and in the meantime the Stevens bill, which is identical, had been reported from the Committee on Judiciary of the Assembly, and then to the order of third reading? A. Yes.

Q. And on the reception of the Malby bill from the Senate, Mr. Stevens moved to substitute the Malby bill for his? A. Yes.

Q. Which motion was agreed to, and on April 17th. the Senate reported to the Assembly that they had passed the Malby bill, and it was ordered delivered to the Governor; that your recollection? (No answer.)

Q. The Malby bill passed, came over to the Assembly, and in the meantime the Stevens bill was in the order of third reading; and he moved the substitution of Malby's bill for his own bill, which motion was agreed to, and the bill was finally passed and sent to the Governor; that is the bill relative to the method of voting? A. Yes, sir.

Q. We therefore have the history of these two bills, so far as any action was taken on them in the legislation of 1901? A. Yes.

Q. Now, calling your attention to pages 57 and 58, of the proceedings of the Senate, in the matter of the investigation de-

manded by Senator Jotham P. Allds; Mr. Osborne in his opening stated to the Senate: "At about that time Senator Conger was approached and was told that he better do something about it, or that bill would be passed. And he thereupon sent for his brother, Frank Conger. This conversation is not one that he had with the learned respondent, but with representatives of the committee, and an agreement was entered into between Frank Conger and these representatives of the Committee on Internal Affairs to the effect that if a certain sum of money was paid to them that that bill would be taken care of and would be not pressed for passage, or by so amending the bill as to take the meaning and sting out of it, which was done pursuant to that agreement." Will you just look to that part of your counsel's opening (hands book to witness).

Judge BRUCE: I may say, gentlemen, for the record, and for the information of the Committee, that this record, being now one of the records of the Senate and therefore one of the records of the Legislature, I have not introduced the record in evidence, but shall read from it freely, because it is a public document, on the files of the Legislature. That is correct, is it not, Senator, that your counsel so stated? A. It is so stated, yes, sir.

Q. Now, who approached you, Senator, in reference to that matter? A. I think this is a little bit misleading. This would seem to indicate that somebody from the committee approached me.

Q. It is not only that it seems to indicate it, but does not your counsel state in so many words, that representatives of the Committee on Internal Affairs had approached you; does he not so state? A. He may state so, but he is wrong in saying that anybody from the committee approached me.

Q. Had you stated to counsel before he opened the case to the Senate that anyone from the Committee on Internal Affairs had approached you? A. I don't remember that I ever did, sir.

Q. Is the statement of your counsel, as I have read it to you, and as it appears on pages 57 and 58 of the record, correct? A. It is not; I was never approached by a member of the committee.

Q. Were you approached by anyone who assumed to represent the Committee on Internal Affairs of the Assembly? A. I don't know what they assumed; I was approached by a member of the Assembly.

Q. Assembly? A. Gene Burnett.

Q. When did he approach you? A. Sometime after the introduction of the bills, when they were in the committee.

Q. How long after the introduction of the bills? A. I don't remember, sir.

Q. Do you refer now to the conversation with Mr. Burnett, to which you testified in the proceeding before the Senate? A. I don't remember what was testified to exactly in that record. I had a conversation with Mr. Burnett in regard to this bill.

Q. Can you tell me — give me your best recollection as to about when the conversation occurred? A. I should say it was some time in February.

Q. Had Senator Malby's bill at the time the conversation occurred reached the Assembly and then referred to the Committee on Internal Affairs? A. I don't think so.

Q. Where did the conversation with Mr. Burnett occur? A. I can't tell you.

Q. Was it inside of the Capitol or outside of the Capitol? A. I think in the Capitol, sir.

Q. Will you state that conversation, or the conversation in substance? A. Why, in substance, Judge, it was to the effect that the bridge bill, so called, was one of the good things; some of the fellows expected to get something out of it, and unless they did, they would force the bill out and pass it.

Q. What did you reply? A. I replied that I wasn't particularly interested in that, but my brother was. My brother was connected with a bridge company, and he was interested.

Q. Referring to your brother Frank? A. Yes.

Q. And what position did he hold in the bridge company at that time? A. He was vice-president of the American Bridge Company.

Q. Now, what further was said at this conversation? A. I don't recall the substance, except I told him I would see my brother, who would possibly come up to see him.

Q. Was anything further said that you can now recall? A. No, sir.

Q. Did he say who on the floor would have to be taken care of? A. He did not; no, sir.

Q. Did he say anything as to whether any members of the Committee on Internal Affairs, of which he was chairman — was he chairman? A. No, sir; he was not chairman.

Q. He was a member of the committee? A. No, sir.

Q. He was not a member of the committee? A. No, sir.

Q. Did he say anything about whether any member of the Committee on Internal Affairs would have to be taken care of? A. No, sir; he did not to me.

Q. Did you see your brother Frank? A. I did.

Q. Did you later see Mr. Burnett? A. I did.

Q. What did you say to him? First, see if we can locate the time, how long after your first conversation? A. I think possibly within a week.

Q. What did you say to Mr. Burnett; and what did he say to you? A. Well, I introduced my brother to him. I do not think I was present at their conversation.

Q. The conversation took place between your brother and Mr. Burnett? A. Yes, sir.

Q. Do you recall whether you were present at part of the conversation? A. I don't recall that I was; no, sir.

Q. Do you recall whether or not you said anything to Mr. Burnett as to the purpose for which your brother was to see him? A. I don't think I did.

Q. Was your brother at that time acquainted with Mr. Burnett? A. No, sir.

Q. Did you introduce him to Mr. Burnett? A. Yes, sir.

Q. Reflect for a moment and see if your recollection is refreshed as to whether or not when you introduced your brother to Mr. Burnett, you stated to Mr. Burnett the purpose for which he wished to see him? A. I don't think I did; no, sir.

Q. Did you see Mr. Burnett after that in relation to these matters? A. I think so.

Q. After your brother had a talk with him? A. Yes, sir.

Q. About how long after that, Senator? A. Why, I saw him nearly every day in the Assembly.

Q. Of course, in your relations you saw him; I mean by that, did you have a conversation with him in relation to these matters? A. I don't think I did; no, sir.

Q. Not at any time? A. I may have had, I don't recall about that.

Q. Now, in this first conversation as I understand you, you testified he had approached you in regard to the matter? A. Yes.

Q. And that you had told him that you would see your brother, and about a week afterwards you approached your brother with him and introduced him to him? A. Yes, sir.

Q. Do you recall whether or not after that time you had any conversation with Mr. Burnett in regard to the matter? A. I do not recall; I may have had, something to the effect that I had seen my brother, and made some arrangements or had some talk, he had seen him, I think.

Q. Did he say to you subsequent to this time what he had talked with your brother about? A. Did Burnett say to me?

Q. Yes. A. I don't think so.

Q. Do you recall whether he stated after that time anything which your brother had said to him with regard to what would be done in order to prevent the passage of the bills? A. I do not think Mr. Burnett did, no, sir.

Q. Do you recall anything that Mr. Burnett said to you at any time in relation to that matter after you introduced your brother to him? A. I do not think I do in relation to this, sir.

Q. Well, I mean in relation to this or in relation to any of the matters pending in the Legislature relative to bridge interests? A. I think there was some conversation in regard to amending the bill.

Q. Senator Malby's bill was not yet reached, was it? A. No, sir.

Q. And I presume Senator Stevens' bill at that time was still in the Committee on Internal Affairs? A. Yes.

Q. Were you a member of the Committee on Internal Affairs? A. I was.

Q. You were in the Assembly two years? A. Yes, sir.

Q. You were a member during both the years? A. No, sir.

Q. Only the last year? A. Yes, sir.

Q. That is the year 1901? A. Yes, sir.

Q. You are aware, are you not, that the Stevens bill as reported by the committee of the Assembly, February 20th, 1901,

as we have seen by the Journal was exactly opposite in policy to the Stevens bill as afterwards amended and reported by that committee on April 8th, 1901? A. Yes, sir.

Q. And you also know, do you not, that when the committee reported the Senate Malby bill with amendment on April 8th, 1901, the sense of the amendments were directly opposite the intent of the original Stevens bill? A. Yes, sir.

Q. Do you know of anything occurring between February 20, 1901, and April 8, 1901, that affected the minds of the members of the Committee on Internal Affairs? A. Do I know of anything that affected their minds?

Q. Yes. A. The minds of the Committee on Internal Affairs?

Q. Yes. A. I do not, no, sir.

Q. I mean which affected their minds in such a way as to lead them to amend this Stevens bill so that it was exactly opposite in policy what it was when it was referred to them, and then when the Malby bill came in to amend it so that it was exactly opposite in policy; do you recall anything that affected their minds? A. I have no knowledge of anything that affected them.

Q. Did any of the Committee on Internal Affairs approach you in regard to that matter? A. I had conversation with them about it, yes, sir.

Q. Did any of them say anything to you in regard to any consideration that would have to be paid either to themselves at that time or afterwards or to anyone else? A. Any members of the Internal Affairs Committee?

Q. Yes. A. No, sir.

Q. Did any of them ever ask for money in return for their support of amendments satisfactory to the bridge companies or opposition to the original bill? A. Never to me, sir.

Q. Did they ever say anything in your presence to anyone else? A. No, sir.

Q. Did any of them ever say anything that was understood by you to mean an invitation for the payment of money? A. Not that I know of, sir.

Q. Did any one of them ever suggest to you that unless something was done, what the bridge interests wished to accomplish would not be done? A. You are speaking of the members of the Internal Affairs Committee?

Q. Yes. A. No, sir.

Q. Did you ever direct or suggest to your brother that he go to see any member of the Committee on Internal Affairs about the bill? A. No, sir.

Q. Did your brother to your knowledge see or talk with any member of the Committee on Internal Affairs in regard to the matter? A. Not that I know of, sir.

Q. Now, Senator, pausing for a moment in order that you may review your evidence, have you told all you know concerning the reasons for the change of front of that committee between February 20th, 1901, and April 8th, 1901? A. Just repeat that.

Q. Have you told all you know concerning the reason for the change of front of that committee between February 20th, 1901, and April 8th, 1901? A. All that I recall, yes, sir.

Q. Search your memory just for a minute, Senator, because it seems somewhat extraordinary that this committee between those two dates should absolutely change front with regard to these bills, and I want to exhaust your memory, and if I could aid you in any way I assure you I would do it; I want to exhaust your memory as to whether or not any member of that committee or anyone purporting to represent that committee, or purporting to represent any member of that committee, have approached you or your brother Frank in any way with reference to these two bills that were pending in the committee? A. I do not recall that they did outside of Mr. Burnett.

Q. He was not a member of the committee? A. No.

Q. I am speaking now, of course, of the members of the committee? A. Yes, sir.

Q. Now, I will take it still broader; between February 20th, 1901, and April 8th, 1901, when this change of policy and change of front on the part of the committee took place, did any person, a member of either house of the Legislature, an employe thereof, or any person other than Mr. Burnett, concerning whom you have testified, approach you with reference to anything that should be done in order to affect these amendments in the committee? A. Not that I remember, sir. I talked with members of the committee and told them in substance that the bill was a bill that would injure my business, and urged them to sustain these amendments, but not outside of that.

Q. Did you promise any member of the committee or anyone on behalf of any member of the committee any money or other thing of value with reference to the action of the committee on these bills? A. Not that I know of, sir.

Q. Did any member of the committee approach you or suggest to you that any money or other thing of value should be given then or at any subsequent time to any member of the committee for his action? A. Not that I remember of, sir.

Q. Then there is no basis in fact for the statement of your counsel in his opening that the action of the committee was the result of an agreement between the committee or any members thereof and yourself, with reference to the amendments? A. No, sir; I think Mr. Osborne was mistaken.

Q. A mistake on the part of your counsel? A. Yes, sir.

Q. Now, are you willing to waive any privilege that exists between you and Mr. Osborne as client and attorney in order that I may if I wish examine Mr. Osborne with regard to what he had in mind at the time he made the statement to the Senate: having no other purpose—I know that counsel often in openings make an incorrect statement of facts through inadvertence, but in order to see whether or not Mr. Osborne had something in mind which I now cannot suggest to your mind to refresh your recollection I ask would you waive any privilege that exists between you and Mr. Osborne as attorney and client with reference to his testifying in that matter? A. Well, Judge, I don't know: I am not an attorney; I don't know what effect that would have.

Q. If I may offer my poor advice, it would only have the effect of allowing me to examine Mr. Osborne with reference to that one item as to what he had in mind. It occurred to me that perhaps Mr. Osborne in making that statement had some facts in mind which I could suggest to you in order to refresh your recollection with regard to whether or not such an agreement existed between members of the committee and yourself or your brother? A. I would not like to consent to that until I have an opportunity to consult with Mr. Osborne.

Q. You will consult with him and let me know? A. Yes, sir.

Q. I haven't any doubt that after you consult with him there will be no objection. Now, Senator, prior to your becoming a

member of the Legislature—what was your first year there again, please? A. 1900.

Q. Had you ever gone to Albany prior in the interest of legislation affecting bridge interests? A. No, sir.

Q. Had you ever had any communications with members of the Legislature? A. No, sir.

Q. Or anyone else in connection with legislation pending in Albany? A. No, sir. Judge, it might clear your mind a little bit if I say—it is in the record of my evidence—that I was not connected with the bridge business until 1907 in any way.

Q. Do I understand your brother was connected with it? A. Yes, sir.

Q. I wish to know whether or not, prior to 1901, and I will ask the general question, whether you had in any way had anything to do with the bridge legislation in Albany? A. No, sir.

Q. Did you know of any moneys having been paid by any of the companies with which your brother was identified prior to 1901 with reference to bridge legislation in Albany? A. No, sir.

Q. Now, coming down to the year 1901, and I am endeavoring to avoid spreading again upon the record matters which have appeared already in this record entitled "The proceedings of the Senate in the matter of investigation demanded by Senator Jotham P. Allds," which is already a public record; I do not wish to encumber this record with unnecessary material, but I call your attention to your testimony as appearing on page 335 of the record, which is the recital of what occurred between yourself and Mr. Moe at the time he made the payment as is alleged to Senator Allds, to Mr. Burnett, and that he went into the Speaker's room with another sum of money; that appears on pages 334 and 335. Will you just glance at it for the purpose of refreshing your recollection, Senator. Now, the substance of your testimony in the Senate in the Allds matter was that in April, 1901, the bridge companies paid through an agent of your brother Frank \$6,000 to prevent the legislation as outlined in the original Stevens bill from becoming a law; is that not so? A. Yes, sir.

Q. The thousand dollars was paid to Assemblyman Allds? A. Yes.

Q. In your presence? A. Yes.

Q. And that you were told that an amount of \$4,000 which you say was in possession of the agent of your brother on that occasion was paid to Mr. Burnett; is that true? A. Yes.

Q. That the agent of your brother entered the Speaker's room for the purpose as you understood of paying \$1,000 there? A. Yes.

Q. Now, Senator, I ask you the broad question whether any other payment made by you or your brother Frank or any of the bridge companies was made by you or your brother Frank or any of the bridge companies that year to any of these men? A. Any other payment?

Q. Yes. A. Not that I know of.

Q. Were any payments made by you or your brother or by any agent acting for either one of you or for any of the bridge companies, to any other members of either house of the Legislature other than these payments which you have testified to, to Assemblyman Allds, Burnett, and the entry of Mr. Moe into the room of Speaker Nixon? A. Not that I know of, sir.

Q. Was any money paid by the bridge companies to any lobbyist, legislative agent or attorneys in the year 1901 for the purpose of defeating such legislation? A. I don't know, sir.

Q. Did you know of such payment? A. I did not know of any, personally at least.

Q. Now, you say you do not know of any personally; do you know of anybody who knows of any payments being made personally? A. Not that I know of, sir.

Q. Did you have any information which led you to believe that other payments were made than these? A. No, sir.

Q. Did you ever hear of any other payment being made? A. No, sir.

Q. Well, what did you mean then when you said that you did not know of any personally? A. I meant what I said.

Q. I wanted to know if you had in mind that you had information which led you to believe that somebody else knew of other payments being made? A. I had in mind that there might have been, but I did not know of them personally.

Q. Did you have any information in relation to other payments? A. No, sir.

Q. Now, did you, did your brother Frank, or did any of the bridge companies or other companies with which you or he were connected make any contributions to the Republican State Committee in 1901? A. Not that I know; they might have done so, but I do not know of it.

Q. Do you have any recollection or did you ever have any information that led you to believe that any of these companies made any payment to the Republican State Committee in 1901? A. Some rumors I think that some of the bridge companies made some contributions, but what they were I do not know, sir.

Q. Do you know the amounts of them? A. No, sir.

Q. Do you know what companies made them? A. It was mentioned — there was a rumor that the American Bridge Company did.

Q. That the American Bridge Company in 1901 had made a contribution to the Republican State Committee? A. Yes.

Q. And who made that on behalf of the bridge company? A. That I don't know.

Q. Do you know when it was made? A. No, sir.

Q. Do you know in what amount it was made? A. No, sir.

Q. What was the source of your information in regard to it? A. It was gossiped around, I don't know, I cannot recall.

Q. Do you mean it was gossiped in Albany, or gossiped around the places where the bridge companies were? A. Among the bridge companies.

Q. Who was then president of the American Bridge Company? A. I don't remember, sir.

Q. Your brother Frank wasn't then? A. He was vice-president.

Q. Did this information come to you from him? A. It may have, I don't remember, sir.

Q. Can't you recall whether or not he told you in regard to any contributions made by him to the Republican State Committee in 1901? A. I cannot recall, no, sir, I cannot recall it.

Q. Do you recall any amount that he said was contributed? A. No, sir.

Q. Do you know of your own knowledge whether any contributions were made? A. I do not know of my own knowledge, no, sir.

Q. Do you now have any recollection of any fact which will be of aid to the Committee in ascertaining whether or not any such contribution was made? A. I don't know of any.

Q. Now let me go back; we have taken the year 1901; let us go backward; do you know whether or not any such contributions were made by any of the bridge companies to the Republican State Committee — I will withdraw that for a minute— were any contributions made by any of the bridge companies to the Democratic State Committee in 1901? A. Not that I know of, sir.

Q. Go backwards then; were any contributions made by you or by your brother Frank or by anyone connected with the bridge companies, or for or in their interest to either the Republican organization or the Democratic organization in the year 1900? A. Not that I know of, sir; I never heard of it if there was.

Q. In the year 1899? A. Not that I know of.

Q. In the year 1908? A. Not that I know of.

Q. In the year 1907? A. Not that I know of, sir.

Q. In the year 1906? A. I never heard of it in any of those years; there might have been, but I never heard of it.

Q. Did you ever have any information which led you to believe that any such contributions were made in any of the years which I have mentioned? A. No, sir.

Q. Now, did your company or your brother or yourself pay any money to influence legislation in 1902; now, this is the first year after 1901? A. Not that I know of; we contributed to the State Committee, but whether that would be considered as influencing legislation is for this Committee to determine.

Q. I will take that up later; I have now particular reference to the payment of any money by you or your brother Frank or by any of the bridge companies or anyone representing them or acting on their behalf to anyone connected with the Legislature either as a member or employe in the year 1902? A. No, sir, not that I know of.

Q. Let me go back for a single question to the year 1901. Were any payments made to Assemblyman Allds, Burnett, and as the evidence of Mr. Moe testified with relation to the payment of Speaker Nixon, other than the \$6,000 in the year 1901? A. Not that I know of, sir.

Q. Did you have any information which led you to believe that any other amounts were paid in 1901? A. No, sir, I have not.

Q. Now, calling your attention again, Senator, to pages 659 and 717 of the record in order to refresh your recollection as to your evidence (showing record), you testified in the proceeding in the Senate, did you not, as appears on page 717 that you had two conversations with Col. Dunn regarding this legislation affecting bridge interests in 1902? A. That does not refer to that here, but I presume I did so testify; I did have some conversations, I don't know how many; I do not think it refers to that there.

Q. Possibly I have got the wrong page. I have the wrong page. It should be 719, instead of 717. Now, just give me the substance of this conversation which you had with Colonel Dunn in 1902 with regard to this legislation, and can you tell me first as nearly as you can when it occurred? A. I think it was sometime during the session, possibly half way through the session of 1902 as I remember it.

Q. And now tell me in substance what you said to Colonel Dunn and what Colonel Dunn said? A. Why, in substance, that certain bills were again introduced, and I wanted to appeal to the Republican organization to have them set aside; I considered them strike bills and injurious to our business; we were Republicans and contributed to the campaign fund and were willing to do so, and in return for that we wanted him to use his influence to have these bills not reported.

Q. What did the Colonel say? A. He said he would see what he could do.

Q. Did you later have a conversation with him in regard to it? A. I might have done so, I don't remember; possibly I did.

Q. Do you recall what the Colonel said? A. I think it was in relation to what I thought we would contribute.

Q. And what did you state to him? A. I think I mentioned the sum of a thousand dollars or something of that kind that we would contribute to the State Committee.

Q. What did he say to that? A. He said he would see what he could do.

Q. And did he later report to you what he would do? A. I do not think he ever reported to me, but the bills were not reported, the bills were not passed.

Q. Did you have any further conversation with Colonel Dunn in regard to it other than the ones you have mentioned in which you stated to him as I understand your testimony that these were strike bills and that you were Republicans and were willing to report to the committee and you wanted him to see what he could do to prevent this strike legislation; did you have any other conversation with him? A. I do not think that year; I did in subsequent years.

Q. Speaking now of 1902? A. Yes, sir.

Q. And did you later make a contribution to the Republican State Committee? A. Yes, sir.

Q. And when? A. I think in October, 1902.

Q. What date in October? A. It was October 28th.

Q. How much did you contribute? A. A thousand dollars.

Q. To whom did you make the payment? A. I think I sent it to the treasurer of the State Committee.

Q. Here in New York? A. It might have been to Colonel Dunn; it was made out to the treasurer.

Q. Did you make any other contribution to the Republican State organization in the year 1902? A. I did not, no, sir.

Q. Did any of the bridge companies to your knowledge make any such contribution? A. I do not know, sir.

Q. Did they to your knowledge? A. Not to my knowledge, no, sir.

Q. Did you have any information which led you to believe that they made any contribution, any such contribution in 1902? A. No, sir, no definite knowledge, no, sir.

Q. What do you mean by definite knowledge; what indefinite knowledge did you have? A. I know one of the companies that I had been a director in had from time to time occasionally made a small contribution; whether they made it that year or not I don't know.

Q. You mean from year to year? A. Yes, sir.

Q. When you say from time to time? A. Yes, sir.

Q. Do you know whether or not that company made any contributions in 1902? A. I don't know.

Q. What is the name of the company? A. Owego Bridge Company.

Q. Did you make any contribution to the Democratic State Committee in 1902? A. No, sir.

Q. Did any of the companies to your knowledge make any contributions to the Democratic State Committee in that year? A. Not to my knowledge, no, sir.

Q. Was there much of an effort, if I may use that word, made in 1902 to secure the passage of the Bridge Bills, as you would call the anti-bridge bills? A. I really don't know; I was not there; I was not in the Assembly that year.

Q. Did you have any knowledge of what was being done in 1902 to pass these bills? A. Only that the bills were introduced and never got out of committee.

Q. Do you know anything that was done by your brother Frank for the purpose of preventing bills being passed in 1902? A. I do not think so — he died that year.

Q. What time in the year? A. Early in March.

Q. Do you know whether previous to his death he had done anything with reference to the preventing of the passage of the Bridge Bills in 1902? A. I do not think he did, sir; he was outside of the State a good deal of the time.

Q. Do you know whether or not he or any other officer of the bridge companies or anyone acting for them paid any money to any member of the Legislature or offered to pay any money in order to prevent the passage of the Bridge Bills in the year 1902? A. I do not, sir.

Q. Do you know whether any threats to pass bills were made by any member of the Committee on Internal Affairs of the Assembly or by any member of the Assembly or of the Senate in 1902 to pass these bills unless something was done to prevent it? A. No, sir.

Q. I call your attention, Senator, to page 434 of the record where you were interrogated by Senator Newcomb; and ask you to read that and see if it refreshes your recollection; does that refresh your recollection whether or not there was a fund raised by the bridge interests to influence legislation in reference to bridge matters in 1902? A. I have already testified that there was a thousand dollars.

Q. Does your evidence given there on that page refresh your

recollection as to whether there was any fund raised in addition to the thousand dollars which you said your companies contributed to the Republican State Committee in that year? A. Nothing in addition to that, no, sir.

Q. And the statement which you have made there subsequent to your statement that you paid the thousand dollars to Senator Newcomb, do these statements refer to this thousand dollars? A. You don' mean to Senator Newcomb; you mean to Colonel Dunn.

Q. I mean in response to the question of Senator Newcomb? A. Yes; he asked me how it was distributed, if I knew how it was distributed; I said no, I don't know how it was distributed. I knew that I swore it was given to Colonel Dunn, the chairman of the committee.

Q. This was the fund to which you referred on page 434 of the record, the thousand dollars which was contributed to the State Committee? A. Yes.

Q. By whom was that fund raised? A. It was raised partially by me personally and partially by some companies that I was interested in.

Q. How much did you raise personally? A. My impression is it was \$250.

Q. And was that a contribution from one of the companies with which you were connected or a personal contribution? A. That was a personal contribution.

Q. What other companies contributed to this fund of \$1,000, if you recall? A. I think the Owego Bridge Company.

Q. Do you know how much they contributed? A. I do not recall now, sir, but it was made up by the Owego Bridge Company and the Canton Bridge Company.

Q. Those two companies and yourself made up the amount, did you? A. Yes, sir.

Q. Was there any other fund raised that year; that is, 1902, other than this contribution to the Republican State Committee in October? A. Not that I know of, sir.

Q. Now, in the talk which you had with Colonel Dunn in the spring, or about the middle of the session of 1902, did you tell Colonel Dunn that you had been held up during the session of 1901? A. No, I do not think I did.

Q. Did you tell Colonel Dunn that the companies had been compelled to pay moneys in order to prevent the passage of this anti-bridge legislation, as so termed, in 1901? A. I do not recall about the details of the conversation. I think I gave him to understand —

Q. Can you tell what he said and what you said? A. I cannot, no, sir; I don't remember.

Q. Can you tell me in substance? A. I think in substance that there were some strike bills introduced the year before that were killed off.

Q. That is just what I wanted to get at, whether or not you stated to the Colonel that there were strike bills introduced which were killed off, or whether you stated to him you had killed them off, and how? A. I don't think I stated how they were killed off.

Q. Now, passing from the year 1902 to the year 1903, and referring you to your testimony as it appears by the evidence on pages 613, 704, 705, 706, 726 and 727, for the purpose of refreshing your recollection, did you have conversations during the session of 1903 with Colonel Dunn in reference to bridge legislation for that year? A. Yes, sir.

Q. I understand the substance of your testimony as appearing on the pages of the record to which I have referred, you say that in March, 1903, you had a conversation with Colonel Dunn in regard to a contribution to be made by the companies which you represented to the State Committee; is that correct? A. Yes, sir.

Q. Now, did you at that time tell Colonel Dunn that this bridge legislation had been again introduced; that is, into the Legislature of 1903? A. Yes.

Q. And what did you say to him about it? A. In substance that the same class of legislation, the same class of bills had been again introduced, referring of course to the year previous when I had told him about the bills.

Q. And what did he say in regard to it; what did you ask him to do, if anything? A. I asked him to assist us in seeing these bills were not reported.

Q. What did he say? A. He said he would see what he could do.

Q. Did you again see him in regard to it? A. Yes.

Q. What did he say; how long afterwards first? A. It must have been two or three weeks.

Q. What did he say? A. That is the time that I went to him with the contribution. I gave him the \$5,000 that I have already been testifying to, as a campaign contribution.

Q. And when you gave it to him, what did you say and what did he say? A. I said in substance, "This is the \$5,000 that was contributed to the State Committee."

Q. What did he say? A. In substance, he said that he would see what he could do; "The committee always needs money," or words to that effect.

Q. Was that all that was said? A. As I recall it. I do not remember any other conversation. There may be other conversations.

Q. Did you have any other conversation? A. I do not think there was, pertaining to this.

Q. Did you have any other conversation with him subsequent to that time? A. I think I did at one time. He wanted to know how much we could contribute, or something of that kind.

Q. What did you tell him? A. I think I mentioned \$5,000.

Q. Was that before or after the time when you paid the \$5,000? A. That was before.

Q. How was this money paid? A. Paid to him in cash, in bills.

Q. At the time you had the first conversation, had the money already been raised? A. No, sir.

Q. Was the money raised between the time when you had the first conversation and the second conversation? A. I think it was.

Q. What? A. I think it was; yes, sir.

Q. Did he, in any of these conversations, say anything to you as to what he had done or proposed to do with reference to stopping the legislation? A. I think he did. I got the impression that he, as chairman of the State Committee, could ask those fellows not to report the bill, as a personal matter.

Q. Did he say whether or not he had made such a request? A. I don't recall that he said anything about that.

Q. Did he tell you anything he had done or intended to do,

other than you have testified with reference to it? A. Not that I recall, sir.

Q. Did he tell you then or at any time of any talks or conversations that he had with any members of either house of the Legislature in reference to this legislation? A. I don't recall that he did.

Q. Now, how was this fund of \$5,000 raised which you contributed, as you have stated, in 1903? A. Why, it was raised by different companies, some paying more than others. There were several companies that contributed to the fund.

Q. Can you give me the names of the companies and the amounts? A. I cannot give you the amounts; I can give you the approximate amounts.

Q. Do so, will you? A. Yes; there was the Rochester Bridge Company, the Penn Bridge Company at Beaver Falls, the United Construction Company, the Climax Road Machine Company, the Owego Bridge Company, Groton Bridge Company, the Canton Bridge Company—there may have been some others I do not recall, but that in substance.

Q. In what amounts did they contribute speaking generally? A. From \$300 to \$800, and some of them \$1,000.

Q. Did you make a personal contribution to this fund? A. No, sir.

Q. Now, was there any other money raised by the bridge companies, or paid in 1903, other than the \$5,000 you have stated? A. If there was, I do not know of it.

Q. Do you know whether any money, in 1903, was paid to any member of the Legislature to influence his vote upon bridge legislation? A. No, sir; I do not know, sir.

Q. Were you or was anyone representing the companies approached by any member of the Legislature, or by anyone representing or assuming to represent them, with reference to bridge legislation in 1903? A. I was not; I do not know whether anybody else was.

Q. Do you know, or have you any knowledge, that any other person connected with the companies was so approached? A. No, sir.

Q. Now, coming down to the year 1904, was any fund raised

by the bridge companies, or contributed by any one of them, or by yourself, or anyone representing them, to influence legislation in 1904? A. Not that I know of.

Q. Was any contribution made to the State organization of either party in 1904? A. If there was, I do not know it; I did not.

Q. Were those bridge bills introduced in 1904? A. I think they were.

Q. Were they reported from the committees? A. I think so.

Q. What was done, to your knowledge, in order to prevent their being reported, if anything? A. It was the understanding that, as chairman of the State Committee, we would not be called upon to contribute any more, and that in consideration of that large amount contributed, he would see that we were never troubled any more, and that these bills would not be reported.

Q. When was this understanding had? A. Some time during the conversation, I think about the time I paid the \$5,000.

Q. And was it in reliance upon this assurance that nothing was done by the bridge interests in 1904? A. I think it was, yes.

Q. Did you make any contribution to any person in 1904, for the purpose of influencing the action of any person on these measures in 1904? A. No, sir.

Q. Were you solicited for any contribution? A. Not that I remember of.

Q. What effort, or did the bridge companies make any effort which you know of, to prevent this bridge legislation in 1904? A. I do not know, sir; none of the companies that I was connected with did.

Q. Coming down to the next year, 1905, you testified, did you not, referring to pages 730 and 740 of the record, that the companies began to raise a fund of \$10,000 in 1905, to prevent the passage or prevent the enactment of legislation. Was that correct? A. Yes.

Q. Now, what was done by the bridge companies toward the raising of this fund of \$10,000 in 1905? A. There was a meeting of the bridge companies in Syracuse, and the matter was discussed, and it was finally decided by a majority of the companies

that it would be a proper thing to see if they could raise money enough to suppress this legislation.

Q. Were you present at the meeting? A. Yes.

Q. How many were there? A. That I do not know, sir; there were quite a number of companies represented.

Q. About how many? A. About fifteen or eighteen people.

Q. Constituting practically most of the bridge companies in this section of the country? A. Very nearly all of them, yes. That is, those that did business in New York State.

Q. How were they going to raise the \$10,000? A. There was going to be an effort made to have each company contribute, a sort of assessment raised.

Q. Was there a vote taken upon the question as to whether it should be raised or not? A. I think so.

Q. A vote by ballot or *vive voce*? A. I don't remember.

Q. Do you remember how the vote stood? A. I don't remember.

Q. Was there any opposition to the proposition to raise the money? A. Yes.

Q. Was the proposition carried by a large majority or a small one? A. A small majority.

Q. What time of year was this meeting held? A. Some time along towards the middle of the session of 1905, as I recall it.

Q. And had the bridge bills already been introduced in the Legislature? A. Yes.

Q. Now, what had been said or what had been done by anybody in the Legislature, or assuming to represent anyone in the Legislature, which led anyone representing anyone of these companies to believe that it was necessary to raise this money in order to prevent the legislation? A. I really do not know what had been said, but it was general knowledge of all the companies that the bills were introduced.

Q. How did you vote on the proposition to raise the \$10,000? A. I voted against it.

Q. I presume statements were made there in advocacy of the proposition? A. Yes.

Q. What did those who advocated the proposition say with reference to the necessity of raising this fund or the legislation would be passed? A. They felt that it would be a matter of say-

ing money, to raise it and pay it, and not have these bills become laws, believing that it would injure the business materially if they were.

Q. Yes, but, Senator, I failed to reveal my purpose in my question. What I want to know is, why did they think it was necessary to do it? What had been said? What demands had been made, and who made them, that made the companies get together and have this meeting, and start in to raise this fund? A. Most of them knew that the money had been raised, knew that it had been necessary to raise money.

Q. Don't you think, Senator, that something must have been said there, or don't you recall, rather, that something must have been said there, by someone advocating this measure, which held the companies to believe that it ought to be done, and in other words, that it must be done? A. I think there was something said like that, yes.

Q. Now, what I want to get at is this; who, representing the Legislature, or what member of the Legislature had approached any bridge company that year and demanded money? A. I do not know, sir.

Q. Was any statement made there as to any such demand having been made? A. As I testified, this meeting was called by a man by the name of Sage, who was a bridge contractor, urging the companies to get together and discuss the matter. The general supposition was that he knew something definite about it. He was the man that was instrumental in calling this meeting.

Q. Yes. Well now, when he got the meeting together, and stated the purpose for which it had been called, what did he say with reference to what led him to call it? A. I do not recall what he did say, sir.

Q. Did he say that anybody had made any demands on the bridge companies? A. He gave us to understand that. I don't exactly remember his words.

Q. Then he did state that demands had already been made on the bridge companies? A. Yes, he gave us to understand that.

Q. Did he say who made the demand? A. I do not know, to my knowledge.

Q. Did he say whether they were members of the Legislature

or not? A. I don't think he did; I understood that they were, but I don't think he said so.

Q. From what did you gather that understanding or impression? A. Who else would demand it?

Q. I don't know; but did he state whether or not the persons making the demand were members of the Legislature? A. He did not, no, sir; not to my knowledge.

Q. Did he state who the men were? A. Not to me.

Q. Did he state anything in your presence or did you learn any statement that he had made, which led you to identify the persons who had made the demand? A. No, sir.

Q. Did you ever know who they were? A. No.

Q. Where is Mr. Sage now, the gentleman to whom you referred as having called the meeting? A. The last I knew of him, he was employed by a bridge company in Toronto.

Q. Now, who was made the custodian of this fund at the meeting in Syracuse? A. Mr. John Newell.

Q. Was he present at the meeting? A. Yes.

Q. Was there a resolution or motion passed that he should be the custodian of the fund? A. I presume so; I don't recall about that, sir.

Q. It would have to be done somewhat in that way, would it not? A. Yes, that would be the natural way to proceed.

Q. Who was Mr. Newell? A. Mr. Newell was general agent for the Canton Bridge Company of Ohio, with offices in Albany.

Q. Well, now, go on and tell me what further was done after this meeting with reference to the raising of the fund. Give me all your knowledge in regard to it, Senator? A. Why, I had very little knowledge as to what was done. I know some companies contributed, I was told by Mr. Newell, and some others did not; and finally it became known around that one company and another had decided not to contribute, and nothing more was done. I understood from Mr. Newell that he returned the money to those that had contributed.

Q. Did your company or the companies that you were connected with, contribute? A. I don't think they did; no, sir.

Q. Didn't they feel bound by the action of the conference? A. I don't know whether they did or not.

Q. Well, did yourself or any other persons connected with the company, personally make contributions toward that fund? A. No, sir.

Q. Do you know what companies did contribute and the amounts they contributed? A. No, sir.

Q. Do you know the name of any company that contributed to the fund? A. Not to my personal knowledge; no, sir.

Q. Was the fund raised? A. No, sir.

Q. Was the fund or any part of it used? A. No, sir, not that I—I don't think so; all I know is that Mr. Newell told me he returned the money.

Q. Was any money used, to your knowledge, during the session of 1905, to effect the defeat of the bridge bills? A. No, sir, not to my knowledge.

Q. What became of the bills? A. The bill was passed.

Q. And became a law? A. Yes.

Q. What changed the attitude of the members represented at this conference from a determination to raise \$10,000 to defeat the bill, to a later determination to abandon the project and allow the bills to go through? A. I do not know, except that they thought that this matter was coming at them every year, and that ultimately it would be passed, and that if it had to come, it might as well come one time as another, and they would stop contributing, get through.

Q. Was a later conference then had, after the conference at Syracuse? A. No conference together; there were general talks among individuals around.

Q. This action at Syracuse had been action at the conference, passing a resolution that the fund be raised. Can you tell me in what way the consensus of opinion was gathered that that action should be revoked and that the fund should not be raised? A. I think the general opinion was that it was impossible to raise it, that amount; that people had become disgusted and would not pay any more.

Q. Was your company one of the companies that became disgusted and would not pay? A. Yes.

Q. And did you have any correspondence with other companies in regard to the attitude they should take towards their

contributions to the fund? A. I think I might have written some letters to some people advocating this meeting and all that; I don't recall about it. I think I did write some letters asking people to come to the meeting.

Q. I mean, after the adjournment of the meeting, and during the progress of the raising of the fund, did you have any correspondence with other companies with reference to their contributing or not contributing to the fund? A. I don't think I did, no, sir.

Q. Did you advocate to any person representing any of the companies, that they should either contribute or not contribute to the fund? A. I advocated to numbers, people that I was connected with.

Q. That they should or should not contribute? A. Should not contribute.

Q. There has been no bridge legislation, that is, since 1905, has there, with reference to revoking this legislation? A. Not that I know of; no, sir.

Q. Then the bills of 1905 practically ended the bridge legislation, so far as the bridge companies were concerned? A. As far as I know.

Q. Now, Senator, is there any fact or suggestion or lead, or any information of any kind which you can give this Committee or its counsel which will show legislative or administrative corruption of any kind whatsoever either before or after the payment of the \$6,000 in 1901, other than you have testified to? A. Not that I recall.

Q. Is there any fact within your knowledge which would indicate or show corruption on the part of any legislator, or others, than those already mentioned? A. Not that I know of; I have no personal knowledge.

Q. Have you ever heard from any living man of any specific corrupt acts, other than those mentioned by you here, or mentioned by you in your evidence before the Senate? A. Will you repeat that?

Q. Have you ever heard from any living man of any specific corrupt acts, other than those mentioned by you here, or mentioned by you in your evidence before the Senate? A. I have heard of rumors, gossip, but nothing definite.

Q. I am asking about any specific act of corruption. A. Not that I know of.

Q. Is there any way you can assist this Committee in uncovering corruption or corrupt acts of State officials, of any kind or in connection with any matter whatsoever other than those you have testified to? A. I do not know as there is.

Q. You would do so if you could, would you not? A. Yes.

Q. You are aware, are you not, that your testimony in the Allds case left a very strong impression on the minds of the Legislature and the public, that there were numberless other corrupt practices and acts which could and should be exposed, are you not? A. Yes.

Q. That such an impression exists? A. Yes.

Q. You knew, did you not, that the general policy of the Senate, was to confine the issues in that case to the specific question of whether or not Senator Allds was or was not guilty of the offence charged? A. Yes.

Q. And that there was corruption hinted at which was not specifically gone into, or a specific attempt to bring it out, because it did not bear directly on the question then before the Senate? A. Yes.

Q. You were a close attendant at the trial, were you not? A. Yes.

Q. Was there anything touched on there within your knowledge which would indicate corruption, or corrupt acts, concerning which I have not questioned you? A. Well, there was a great many—not a great many, but there were several leads that were brought about, particularly that Adirondack land purchase that was brought out.

Q. Yes, what others? A. I do not know; I do not recall any others that were brought out specifically at that time.

Q. Well, that were brought out, we will say, generally. To be frank with you, Senator, I want to exhaust your knowledge, because if there are any leads, this Committee would be very grateful to you if you would apprise them of them. A. No specific acts, Judge. Of course there were always rumors around, but nothing specific that I know of.

Q. Now, Senator, was there anything said by you at the Ten

Eyck Hotel January 4th, 1910, at a meeting of the seven Senators, about any other corrupt acts than those you afterwards testified to, that you know of, or had heard of from any person, except those which you have testified to here to-day, or had testified to before the Senate investigation? A. Repeat that again.

Q. Was there anything said by you at the Ten Eyck Hotel at the meeting January 4th, 1910, when the seven Senators were present, about any corrupt acts of which you had knowledge, other than those that you have testified to here to-day, or testified to before the Senate? A. I don't recall that there was.

Q. Now, Senator, in view of your answers, and in order to exhaust every possible line of inquiry, I want to state to you that I have heard it reported that you remarked, at or about the time of the Allds trial, that the matters there related by you concerning the corruption funds raised and paid by the bridge companies, were but as a flea-bite compared with other similar matters which were going on at Albany. Do you remember making substantially such a statement? A. I may have made that statement. I believe that to be true.

Q. If you did make that statement, or if it be true, or if you made any one that is like it, or one from which an inference was drawn, that you knew of, that there was or existed great corruption at Albany, please state to the Committee upon what your remarks were founded? A. It was general rumors of things that had been going on. I do not recall any specific thing, but you could not stay in Albany very long, but what you would meet some of these things in the air, that things had been going on.

Q. Was it in any way, or any particular based upon knowledge, or was it upon what any living person had stated to you, within his personal knowledge? A. No, sir.

Q. Could you then or can you now, substantiate it in any particular? A. As to some specific thing, you mean?

Q. Yes. A. No, sir.

Q. And of course you on your oath, would here state it, if you could, would you not? A. Yes.

Q. Now, Senator, is there anything you can say in addition to what you have stated here or sworn to before the Senate, as either a citizen desiring to shove this probe to the bottom, that

would be in any way useful to this Committee or help it in this work? A. I do not know of anything specific, no, sir.

Q. If you have within your knowledge, Senator — or I will change that — if you have any knowledge in regard to any corrupt practices in Albany, will you kindly now state them to the Committee, other than those you have testified to here or before the Senate Investigating Committee? A. I have no specific knowledge, no, sir.

Q. Does your evidence given here and your evidence given before the Senate Investigating Committee, comprise your complete knowledge of any corrupt practices whatsoever in connection with legislation or public officials? A. Yes.

Q. One further question in regard to 1901; do you know where any portion of the \$4,000 which was paid Mr. Burnett in your presence, was to go? A. Not to my personal knowledge, no, sir.

Q. Do you know of any person that was to participate in or receive any portion of the \$4,000? A. No, sir.

JOHN NEWELL, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. Albany county.

Q: What is your business? A. Agent.

Q. For what? A. Canton Bridge Company.

Q. How long have you held that position? A. Since 1893.

Q. Do you have an office in Albany? A. Yes.

Q. Did you have, during the years 1901, 1902, 1903, 1904 and 1905? A. Yes.

Q. You have heard the evidence, have you, of Senator Conger given upon the stand, with reference to the meeting of representatives of the bridge interests in Syracuse in 1905? A. Yes.

Q. Were you present at that meeting? A. Yes.

Q. How many other persons were there? A. I can hardly say accurately. I should judge —

Q. When was it held? A. Sometime in the month of January, about the middle of January, 1905.

Q. How did the meeting happen to be called? A. I can hardly say.

Q. How did you happen to get knowledge that there was to be such a meeting? A. I kind of believe that Mr. Sage gave me notice

Q. Gave it to you personally or sent it to you by mail? A. I think he did.

Q. What did he say when he said there was going to be a meeting? A. He said, "I would like to have the bridge men meet; there is a hold-up, and we would like to have them get together."

Q. He said there was a hold-up? A. I would not say those were the exact words, but that was about it.

Q. That, in substance? A. Yes.

Q. Whom did he say was making the hold-up? A. He didn't say.

Q. You understood him to refer to bills then pending in the Legislature? A. I understand so.

Q. Well, you knew it, didn't you; there was no doubt in your mind at all? A. No.

Q. Try and search your recollection if you can for a moment. Did he state who were making the hold-up? A. No, sir, he did not.

Q. Had anyone spoken to you with reference to measures then pending in the Legislature? A. It had been talked over.

Q. You mean among whom? A. Well, casual conversations.

Q. That is, among the bridge men? A. Yes.

Q. Did you talk with any member of the Legislature in regard to it? A. No, sir.

Q. Did you talk with anyone representing any member of the Legislature in regard to it? A. No, sir.

Q. Did you talk with any representative, agent or lobbyist? A. No, sir.

Q. Had anyone approached you from the Legislature regarding it? A. No, sir.

Q. He said he thought the bridge men ought to get together. Did you assent to that? A. I did.

Q. Well, the meeting was called? A. Yes.

Q. How many do you say were there? A. I think possibly a dozen; I will not swear.

Q. Representing practically all the bridge companies doing business in the State of New York? A. I should say so.

Q. Tell us what took place; who called the meeting to order? A. I can hardly say.

Q. Where was it held? A. At the Yates Hotel.

Q. What time of day? A. I think in the afternoon.

Q. Who called the meeting to order? A. I don't recall.

Q. Did Mr. Sage? A. I hardly think so.

Q. Why do you think he did not, if you do not recall who did? A. Well, I certainly cannot recall.

Q. Well, when the meeting was called to order, then what was done? A. The matter was discussed.

Q. Did they have a secretary? A. If they did, I don't remember.

Q. Were minutes taken of the proceedings? A. I think not.

Q. That is probably correct, is it not? A. Yes, I think so.

Q. Well, you say the matter was discussed; who opened the discussion? A. I can hardly say.

Q. What is your best recollection? A. I think Mr. Sage probably started it.

Q. What did he say? A. Well, he said substantially there was a hold-up in Albany, and we wanted to get together and see what could be done to stop it.

Q. Whom did he say was holding up? A. He didn't say.

Q. Sure of that? A. Yes.

Q. Did anyone inquire? A. No, sir.

Q. Well, what did he suggest ought to be done? A. He thought there ought to be some money raised.

Q. Did he say what amount? A. I think it was thought it should go as high as \$10,000.

Q. Did he give a reason why he thought \$10,000 was needed? A. No, sir.

Q. That was the most that had ever been raised, was it not? A. I should say it was, yes.

Q. Didn't he give some reason why this unusual amount should be raised that year? A. No, not that I recall.

Q. Didn't someone inquire why \$10,000 should be raised? A. Possibly he did.

Q. What did he say? A. I cannot recall what he said.

Q. Did he say that a demand had been made for that amount? A. I don't hardly think he did; I think he said it would take that much.

Q. Did he say on what he based that suggestion? A. No, sir, he did not.

Q. Was there other discussion in regard to it, besides the talk of Mr. Sage? A. Very little.

Q. Who else spoke in regard to it? A. I cannot recall.

Q. Did you speak? A. No, sir.

Q. Did Senator Conger speak? A. He may have made a few remarks, but if he did, I don't remember them.

Q. Do you recall that he did? A. I think he did.

Q. What was his attitude? A. He seemed to be against them.

Q. Was there any doubt whether he was against it or not? A. I think he was against it.

Q. Did he say he was against it? A. He said he didn't believe in it.

Q. He didn't believe in raising anything, or raising that amount? A. Didn't believe in raising anything.

Q. Did he say why? A. He didn't say why.

Q. Didn't he give a reason for his attitude? A. He did not.

Q. Wasn't that what he was on his feet for? A. Possibly.

Q. He had been in favor, in years prior to that time, of raising funds for the purpose of defeating bridge legislation, hadn't he? A. Well, he said he was engaged in it, swore to it.

Q. Well then, did he make a statement why he thought that having raised funds in previous years, he thought they should not raise any in 1905? A. I don't recall.

Q. Who else spoke besides Mr. Sage and Senator Conger? A. As I recall now, it was a general discussion.

Q. First, who were present; give me the names of those who were present? A. I am not able to do it.

Q. Well, as many as you now recall. A. Mr. Conger was present, Mr. Sage was present, Walter A. Cook was present.

Q. Who is he? A. He was ostensibly the agent of the Acme Road Machinery Company.

Q. Where does he reside? A. Frankfort, N. Y.

Q. Now living? A. Who?

Q. Is he now living? A. Very much alive, sir, very much.

Q. Who else? A. Well, Mr. Sickman of the Syracuse Bridge Company.

Q. He resides at Syracuse? A. I don't know where he resides.

Q. Do you know whether he is living or not? A. I don't know, sir.

Q. Who else was present? A. I believe that Mr. W. N. Conger was present.

Q. He lives at Groton? A. He lives at Owego.

Q. Connected with the Owego Bridge Company? A. Yes.

Q. Who else? A. The New York Bridge Company of York, Pennsylvania, was represented. I hardly know who their representative was, I cannot think of his name.

Q. Who else in this State? A. I think Mr. Manning of the Climax Road Machine Company.

Q. Where does he reside? A. At Marathon.

Q. Is he living? A. I suppose so.

Q. Can you recall anyone else at present? A. No, not surely, I cannot.

Q. Well, there were a great many persons present, were there? A. I hardly think it would exceed a dozen.

Q. Can you recall any others than those you have now mentioned? A. I cannot, no.

Q. Who else spoke on the bill besides Mr. Sage and Mr. Conger? A. The discussion was general; there were no speeches made.

Q. Now, did anyone say anything at that meeting as to who was making the hold-up? A. No, sir.

Q. Did anyone say anything in that meeting as to why the \$10,000 should be raised, that is, that amount? A. No, sir.

Q. Well, now, you understood it was a legislative hold-up, did you not — didn't you so state to me — in connection with these measures? A. Yes, sir.

Q. Now, it seems to me, Mr. Newell, and I think it must be

clear to you, that something must have been said, why the \$10,000 should be raised in 1905, which was so far in excess of what had been raised in previous years? A. Well, it would appear — it would appear that way. I can't give you my reason for it.

Q. Did anyone suggest that they should raise a lesser amount? A. I believe that was talked of.

Q. Well, then, in reply to that what did the person say who wanted the larger amount? A. Well, he didn't say very much.

Q. Well, he must have given some reason why it would take \$10,000? A. He said he needed it personally himself. He wanted it.

Q. Did he say why he wanted it? A. He wanted to use it.

Q. For what purpose? A. He never said; it was inferred.

Q. That is, to raise the hold-up? A. Yes.

Q. Did he say to whom he was going to pay it? A. No, sir, he did not.

Q. Did he say who had made any demand upon him? A. No, sir.

Q. Now, didn't he say something, Mr. Newell, from which you gathered some impressions, to whether a demand had been made?

A. He certainly did not.

Q. And as to who had made the demand, if one had been made? A. He did not.

Q. Was there a vote on the resolution? A. There may have been, or else it was general assent. I am not prepared to swear positively about a vote.

Q. How did you vote? A. I don't recollect that I voted at all.

Q. You were present, were you not? A. I was.

Q. Representing your company? A. Yes, as I supposed I was.

Q. Were you in doubt as to what was the best thing to do? A. No, sir, I was not in doubt.

Q. What was your attitude on the measure? A. To do nothing.

Q. Why didn't you vote that way? A. I didn't say that I voted for it.

Q. But you said you didn't know whether you voted or not?

A. I don't think I did vote.

Q. If a vote was taken, or had, why didn't you vote against

the measure or motion? A. I will correct that testimony by saying I did not vote.

Q. You did not vote? A. I did not vote.

Q. Why didn't you? A. I can't recall what my feelings were at that time.

Q. You were present, and you heard there was a proposition made to raise a fund of \$10,000; you were opposed to it, a vote was taken on whether you should raise it or not; you didn't vote; why didn't you vote? A. Because I didn't believe in it. I didn't think it was right to do it.

Q. Then why didn't you vote no? A. Sometimes a person don't vote because they think they won't do any good.

Q. It would have done good there, here was a division of the conference? A. I question very much as to whether there was a vote taken; I doubt about there being a vote; there might have been.

Q. They decided what they were going to do? A. They decided, that is true.

Q. How was that decision arrived at? A. By general assent.

Q. All were in favor of it? A. Possibly.

Q. You were not in favor of it, and Senator Conger was not in favor of it? A. I was lukewarm.

Q. Then you didn't vote against it? A. I did not.

Q. Now, what was the doubt in your mind? A. It wouldn't do any good.

Q. But it had done good in previous years, hadn't it? A. I don't know whether it did or not; I have never been convinced that it did.

Q. The bills had never passed before? A. That is true.

Q. You were in doubt as to whether it would do any good, is that correct? A. Well, personally, I would prefer to see the law passed.

Q. But you were in doubt as to whether it would do any good at that time? A. I was, certainly.

Q. If you had thought it would have done any good, how would you have voted? A. I think I would have voted, if I voted at all, against it just the same.

Q. Then why didn't you vote against it? A. I can hardly analyze my feelings five years back. Five years ago it was done.

Q. Why did you think — did you doubt as to whether it was advisable to raise the amount of \$10,000, or whether it was advisable to raise anything? A. I didn't think it was advisable to raise anything.

Q. Did you so state? A. I think I did; I won't swear positively; but I think I did.

Q. Then you spoke on the matter? A. I didn't make any speech; I may have made a remark. I didn't believe in it; it was wrong.

Q. But when the matter came up for a vote, if it did come up, you think you did not vote? A. I am positive I did not vote, because there was no vote.

Q. Now, you are positive there was no vote? A. I am not able to say.

Q. Now, in previous years you had assisted in raising the funds, had you not? A. Well, I had done very little towards it.

Q. Well, you and your company had done your share towards it? A. Very little.

Q. Well, whatever that share was? A. Yes.

Q. Now, why your change of attitude? A. Well, it would be hard to explain. We have a change of feeling on occasions, don't we, all of us?

Q. Yes, that is what I want to get at now; I want you to give me a reason for it? A. Experience teaches us that we often get a new idea after going through a thing, don't it?

Q. But, your experience had been favorable, had it not; the bills had not passed? A. That is true.

Q. Now, when you were at Syracuse, was it a question of morals or a question of politics? A. I don't want to put myself up for an angel.

Q. No; just give us what the fact was; did you think it was bad policy or bad morals? A. Bad policy.

Q. Well, now, there must have been some reason why it had been good policy years before, and it had worked well, because the bills never passed; why this change of your views as to policy, Mr. Newell, can you tell me? A. My experience was it was a bad thing. It put hundreds of competitors in the field. It made the business bad. There were certain classes of men traveling

through the country making the business bad, and I was against them.

Q. Did you state that to the conference? A. I did not.

Q. Why not? A. Because I didn't care to state it; it was well known; it was a matter I didn't care to discuss.

Q. You had gone up there to participate in the conference, hadn't you? A. Yes, sir.

Q. You represented your company? A. Yes, I went up by invitation.

Q. Didn't you think they should have your vote? A. I told you that I was uncertain about it.

Q. They finally decided to raise the money, did they? A. That was the decision, yes.

Q. Now, after they decided to raise the money, did they select a custodian for the fund? A. Yes.

Q. Who was selected? A. They appointed me.

Q. They appointed you the custodian? A. Yes.

Q. Did you refuse to act? A. No.

Q. You assented to the proposition that you would act? A. Yes.

Q. Well, now, if you thought it was bad policy or bad morals, why did you accept the position of custodian of the fund? A. Well, we all do things that is wrong sometimes, you know, even when we know it is wrong, don't we?

Q. I am asking you what the reason was that operated on your mind to the determination; you did accept it, however? A. I did, sir.

Q. How were the assessments laid upon the companies, in equal amounts? A. No.

Q. Proportioned how? A. The greatest amount that I had in my possession, as I remember —

Q. I mean, how much was each company to contribute? A. I could not tell you.

Q. Was that fixed at the conference? A. It was, I believe.

Q. You were to be the custodian of the fund, and the moneys were to be sent to you? A. Yes.

Q. Don't you know how much you were to receive from each company? A. I may have had at that time some record of it; perhaps I jotted it down.

Q. Now, on what basis were the contributions fixed; in equal amounts or unequal amounts? A. Unequal.

Q. On what basis were the assessments made? A. I can hardly say, except by discussion.

Q. And each one assented as to the amount they would give? A. No, some were willing to pay more than others.

Q. What was the largest amount that you received, do you recall? A. The largest amount I received in a single check?

Q. No, that was assessed, and any company assented to contribute? A. Well, I would say \$500 was the largest.

Q. And the smallest amount? A. \$150.

Q. What amount did your company agree to pay? A. Well, there never was any money spoken of.

Q. What amount did they agree at the conference they would pay? A. I would say \$500.

Q. What amount was Senator Conger's company to pay? A. It is hard to say.

Q. About how much? A. Possibly \$500.

Q. Now, you went back to Albany, did you? A. Yes.

Q. How soon did the funds begin to come in? A. Immediately.

Q. Did your company pay its contribution? A. It never was paid; it stood ready to pay it, but didn't pay it.

Q. Did Senator Conger's company make its contribution? A. Yes.

Q. How many companies sent in contributions? A. Possibly five or six.

Q. What were their names? A. I don't recall.

Q. Can you give me the names of some of them? A. I can give the names of some of them, yes.

Q. Please do so. A. The York Company, I think, was \$150.

Q. What others? A. It would be very difficult if I could give the names of every one.

Q. See if you can do so? A. I would very much dislike to give a partial list of these names.

Q. No doubt of it. A. I can tell you the amount of money I received.

Q. Give me the names of the companies which contributed?

A. I am not able to give you all.

Q. Give me those you can? A. I will give you the Syracuse Bridge Company.

Q. What other one? A. The Rochester Bridge Company.

Q. What other? A. The Sage.

Q. You mean Sage's bridge company, or was there a Sage Bridge Company? A. No, that is the trouble, to remember.

Q. Did Mr. Sage represent a bridge company, or was there a company known as the Sage Bridge Company? A. Yes. No, never such a bridge company.

Q. The company represented by him? A. He represented at one time the Penn Bridge Company, but I am not sure at Rochester he represented the Penn Bridge Company, because I don't know whether he was the agent at that time or not.

Q. You are not positive about that? A. No.

Q. Give me the others you now recollect? A. I say the Climax Road Machine Company.

Q. What did you say? A. I would say the Climax Road Machine Company.

Q. Can you recall any others? A. Hardly.

Q. What amount did you receive in all? A. As I recall, \$1,950.

Q. You kept a record, did you not, of your receipts? A. I did at the time, yes.

Q. Where is that record? A. It has been destroyed.

Q. Why destroyed? A. Because it was unnecessary to carry: we don't carry those records for years.

Q. How was the record kept? A. Check book, some stubs.

Q. How long was it preserved? A. About three years.

Q. Who destroyed it? A. I suppose it was destroyed among other effects we had no use for.

Q. Do you recall its destruction? A. No, I do not.

Q. Do you know who destroyed it? A. No.

Q. Do you know the time it was destroyed? A. No.

Q. But it has been destroyed, has it? A. Yes.

Q. How much do you say was paid in in all? A. I would say \$1,950.

Q. How long a time elapsed between the meeting of the companies representatives in Syracuse and the payment of the money? A. Well, it all came in within a week possibly.

Q. Didn't you then begin to communicate with the delinquents?

A. No, sir; I did not.

Q. Didn't you notify them that the assessment was due and they should pay it in? A. Never wrote a letter about it.

Q. Did you talk with them? A. No, sir.

Q. With any of them? A. No, sir.

Q. Did you communicate with them in any way? A. No, sir.

Q. Did you talk to Mr. Sage about it? A. No, sir.

Q. Did you tell Mr. Sage the money had not been paid in?
A. No, sir.

Q. Did Mr. Sage come around and say it was necessary to have the money to raise the hold-up? A. No, he did not.

Q. Did you have any talk with him whatsoever? A. I may have had a talk with him; if I did I don't recall it.

Q. What did you say? A. If I had a talk with him, I discouraged him.

Q. Well, didn't Mr. Sage come around and make any inquiries as to whether you had the money? A. He may have dropped in.

Q. What did he say? You remember at the conference he said he had to have \$10,000. A. He didn't emphasize it strongly; he said if he had it.

Q. If I recall your evidence correctly — perhaps I don't quote you correctly — he said he had to have it, \$10,000. Now, didn't he come around to see if you got it? A. He dropped in, I think, once or twice.

Q. What did he say? A. Well, I hardly can recall.

Q. Did he ask you how much you had in? A. He may have asked me.

Q. Did he ask who hadn't paid? A. He may have asked who was paying up.

Q. Did he tell you you had better notify some of them? A. No, I don't think so; no.

Q. Did he call any more than once? A. I hardly think so.

Q. What did he say was going to happen up in the Legislature?
A. He became pretty lukewarm himself before he got through with it. He lost interest in it, too.

Q. Did he say why? A. No.

Q. Did any member of the Legislature speak to you about it?
A. No, I never knew a legislator in Albany, not a single man.

Q. How was this money going to be paid out when you got the \$10,000; who were you to pay it to, if it was paid it? A. That never was passed upon. I guess I was to hold it until ordered to turn it over, as a member of the committee, if there was a committee.

Q. Was there a committee? A. I don't know as there was, I hardly think so.

Q. Who was going to authorize you to pay it over? A. That is dim in my mind.

Q. Who? A. I don't know.

Q. That was quite a large amount of money to have in custody, was it not? A. Yes, sir.

Q. Now, Mr. Newell, didn't you understand at the time the conference was held, on whose authority you were to pay it out? A. I don't recall.

Q. Who were you going to pay it out to? A. I don't recall that.

Q. To whom were you going to pay it? A. I don't recall.

Q. Were you going to pay it to Mr. Sage? A. I didn't want to if I could help it.

Q. Why not? A. Because I didn't want to.

Q. Why not? He is the man that stated at the conference he had to have it. Why didn't you want to pay it to him? A. I didn't want the money used.

Q. I know, but you had assented; you had consented to act as custodian of it; now after having consented, and the money having been paid, I ask you why you didn't want to pay it over to Sage? A. I was morally certain it would never be raised. I was sure it never would be raised.

Q. If it was raised, to whom were you to pay it? A. I don't recall.

Q. On whose authorization were you to pay it? A. I don't recall that, sir.

Q. Now, that seems most extraordinary to me. A. It does seem so.

Q. You are a business man? A. It does seem so; it is five years ago, or better.

Q. That is not so long ago, five years ago; \$10,000 was to be

placed in your hands, contributed by various companies, on the request of a man who said he had to have it to stop a hold-up; you consented to act as custodian; now, Mr. Newell, can't you search your memory and tell me on whose authorization you were to pay it out, and to whom you were to pay it? Just pause for a minute; that certainly could not escape your recollection? A. If you want my recollection, it is that the matter was to be settled later; if the \$10,000 was raised it was then to be determined to whom I was to pay it.

Q. By the committee? A. Well, by all of the members, or all the companies.

Q. Were you all going to get together again? A. Possibly; there was no date set for a meeting.

Q. Wasn't something said when they adjourned as to whether they should come together again when the fund was raised? A. No, sir.

Q. Wasn't there a committee appointed? A. I don't recall; it was an informal meeting, very informal.

Q. It seems to me it was rather formal; at least it resulted in the decision to raise money and the appointing of a custodian? A. Yes.

Q. Now, was it the decision that they were to come together again to determine when it should be paid out, or was there a committee appointed and given that power? A. There was no committee that I remember.

Q. Was there to be another assembling of the conference? A. I have no recollection that there was to be another meeting called; there may have been.

Q. What did you do with the \$1,900? A. Why, I deposited it in the bank.

Q. How long did it remain there? A. I should say it remained there from the middle of January until some time in May.

Q. Then what did you do with it? A. I returned it to each one of the contributors.

Q. Who told you to do that? A. Someone, Sage, or someone, said they wanted the money back; I don't recollect that there was another meeting.

Q. Didn't Mr. Sage come in and tell you you had better return the money? A. I don't recall.

Q. Did you return the money? A. Yes, sir.

Q. Did the bills pass? A. Yes, sir.

Q. Do you remember what month they passed? A. I think it was May.

Q. Did you return the money before or after the bills were passed? A. I don't recall when the bill passed, when it became a law.

Q. Did you return the money before or after it passed? A. I don't recall when it became a law.

Q. What did you do? A. I don't recall when the bill became a law; it was given back in May, I think.

Q. Did you deposit the money to your own account in the bank? A. Yes.

Q. As trustee or individually? A. Individually.

Q. How did you return the money? A. As an individual.

Q. By check? A. Yes.

Q. Had you such accounts before that? A. No.

Q. Had you been the custodian of any other fund raised for such purposes? A. No, sir.

Q. Didn't Mr. Sage come in from time to time to tell you that if the money was not raised the bills were going through? A. I don't recall that he did.

Q. What is your best recollection? A. My best recollection is that he did not come in; someone else may have come in.

Q. What excuse did any of the companies make for not sending in their contribution? A. Well, it is my impression I never called upon them to send it in.

Q. Did you talk with any of them as to why they had not contributed? A. No, sir.

Q. You did not? A. No, sir.

Q. Do you know why you were chosen as custodian of the fund, Mr. Newell? A. I never did know.

Q. Was it suggested you would be the proper man to act because of your residence in Albany, and your having an office there? A. No.

Q. Anything of that kind said? A. No, sir.

Q. Do you know why Mr. Sage was not selected as custodian of the fund? A. I do not.

Q. Do you recall whether it was suggested at the conference that a committee be appointed, upon whose authority this fund was to be paid out, and that the reason that was done was because they didn't want Sage to get hold of it? A. I don't recall that.

Q. What is your recollection about that? Now, Mr. Newell, just wait a moment; search your recollection before you answer. Isn't it a fact they didn't want Sage to get hold of the money, and you were appointed custodian, and a committee was appointed and you were not to pay out the money except on the authority of the committee; now, isn't that a fact, Mr. Newell? A. I should judge that that might be.

Q. Not it might be; that is the way it looks to you; doesn't it look that way to you? A. Yes, it does.

Q. Isn't your recollection that way? A. There may have been some talk around generally among the representatives that they didn't want Sage to have the money.

Q. Wasn't it, as a matter of fact? A. Yes.

Q. There was such a talk? A. Yes; I don't want to hurt his feelings, but I have to do it.

Q. You have to do it? A. Yes.

Q. Isn't it a fact a committee was appointed? A. I will not swear to that; I doubt it very much.

Q. They never appointed a certain man, on whose authority you were to pay out the money? A. I don't think so; I believe the matter was to be considered afterward.

Q. By the whole conference? A. I believe so; that is my recollection now.

Q. Do you remember, Mr. Newell, whether there were hearings held before committees in 1905 on these bills? A. No, sir, I do not.

Q. Did you attend any hearings? A. No, sir, never.

Judge BRUCE: Is Senator Conger in the room? (No answer.)

Judge BRUCE: I think that is all, Mr. Newell. I think that is all for to-day. It appears, Mr. Chairman, since the evidence was given yesterday by Assistant District Attorney Elder, I had Mr. Hurrell, one of the assistants of the legal staff of the Committee, go to Sing Sing prison and interview Mr. Schroeder, who is an inmate there.

Mr. Schroeder desires to testify before the Committee. In view of the fact that he cannot attend here and testify, I make the suggestion to the Committee that it adjourn, and that the Committee to-morrow forenoon go up to Sing Sing prison, and accord Mr. Schroeder the opportunity that has been accorded to every one else who has been accused here, of attending before the Committee and testifying.

Chairman MERRITT: Is that satisfactory to the Committee? (No dissent.)

Chairman MERRITT: The Committee is of the opinion that the suggestion of counsel is wise and reasonable under the circumstances, and the Committee will adjourn for the day with the understanding that the course suggested by Judge Bruce will be followed.

The Committee thereupon adjourned to meet to-morrow morning, October 21, 1910, at 11 o'clock, at Sing Sing prison, Ossining, New York.

FIFTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

SING SING PRISON.

OSSINING, N. Y., *October 21st, 1910* — 11.30 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ISIDOR J. KRESEL, ESQ., } *Assistant Counsel*.
ALFRED HURRELL, ESQ., }

FREDERICK SCHROEDER, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Mr. Schroeder, you are an inmate of Sing Sing prison, are you? A. Yes, sir.

Q. And prior to your being sentenced, where did you reside?
A. 169 Pulaski street, Brooklyn.

Q. What was your business? A. I was at that time Quarantine Commissioner of the Port of New York.

Q. How long have you held that position? A. Fifteen years.

Q. You were then Quarantine Commissioner during the year 1908, were you? A. Yes, sir.

Q. And where was your office? A. Corner of William and Cedar streets at that time, 1908.

Q. In the Borough of Manhattan? A. Borough of Manhattan, yes, sir.

Q. Were you acquainted with Otto J. Foelker, who at that time was a Senator representing one of the Brooklyn districts? A. Yes, sir.

Q. How long had you known Senator Foelker? A. Well, I had known him probably five or six years before that.

Q. Was your residence within his district? A. It was in his Senatorial district, yes, sir.

Q. Senator Foelker testified before this Committee, on the 19th day of October, 1910, and in the course of his evidence, he testified as follows, which appears upon page 1292 of the record:

“Q. When were you next approached by him” — “him,” referring to Senator Gardner — did you know Senator Gardner? A. I did.

“Q. When were you next approached by him or anyone else with reference to your vote upon this measure?” Referring to what was then known as the Race-Track Bill. You were aware, were you not, Commissioner, that at the regular session of 1908 of the Legislature, and also at the extraordinary session subsequently, that there were measures in the Legislature which were known as the Race-Track Bills? A. Yes, sir.

Q. Bills amending section 351 of the Penal Code, with reference to betting and gambling at race-tracks? A. Yes, sir.

Q. You were aware that such bills were pending, were you not, Commissioner? A. Yes, sir.

Q. And that is the measure which is referred to in the question here. I will read it again.

“Q. When were you next approached by him or anyone else with reference to your vote upon this measure?” To which Mr. Foelker replied:

“A. The Monday preceding the first vote, a telephone message came to my office while I was out, that I should call at the office of Quarantine Commissioner Schroeder; Frederick Schroeder; he wanted to see me on a very important matter. I went to his office, which I believe was in William street. In any event, it was the office of the Quarantine Commissioner, and there I saw him. He closed the door and talked to me, said he wanted

to talk to me about the race-track bill. I sat down and listened to him. He said, 'Now, I understand you are going to vote for this bill.' I said, 'Yes, I am going to vote for it; I believe that the people in my district are for it, and I shall vote for it.' 'Oh, no, that's all right,' he said; 'you better vote against this bill and I will make it worth your while. I think I can give you \$45,000 for your vote.' I said 'I would not for one moment consider it.' And he said 'I can get you perhaps \$4,000 or \$5,000 more.' I said 'I would not do it if you got a million.' He got angry at me and flushed up, and I would not talk to him any longer, and said good-bye and walked out."

The next question was:

"Q. Who was present during the latter or any part of this conversation?" His answer was:

"A. There was no one present at that time, at all.

"Q. Where was the Commissioner's office at that time? A. I believe in William street, I am not quite sure.

"Q. In what office were you with him, in his private office? A. In his private office; as you enter the office on the left-hand side, there was a door that led into another office, that I went into, on the right-hand side; there was an outside office on the right-hand side, where there were other people.

"Q. Was this door closed? A. It was closed after I entered the door, yes.

"Q. Did anyone accompany you to the office of Commissioner Schroeder? A. Nobody accompanied me to that office.

"Q. Was anyone present with him at the time you went in? A. In the office where he was?

"Q. Yes. A. No; people outside of the office.

"Q. What time of day was it? A. It was somewhere around pretty close to noon time.

"Q. From whom did you receive the message over the phone from Commissioner Schroeder? A. I didn't receive the message; someone in my office got it.

"Q. Where is Commissioner Schroeder now? A. At the present time he is in Sing Sing Prison.

"Q. Having been convicted and sentenced for a felony? A. He was." That is all. Now, Commissioner, the Committee be-

cause it was not able to have you come down and appear before it at its meetings which have been held in the Aldermanic Chamber, City Hall, in the Borough of Manhattan, have come up here to give you an opportunity to make any statement which you wish to make with relation to this evidence of Senator Foelker, and I now give you that opportunity? A. I will make a statement.

Q. Whatever you wish to say, Commissioner? A. I thought you would put questions to me. On a Sunday, I don't know the date, this was on a Sunday, I just got through my dinner at 169 Pulaski street, where I lived; the telephone rang up; I went to the phone; the phone was on the second floor, and Mr. Hasenflug, Senator Hasenflug was on the phone; he asked if it was me, and he says to me, he says, "Fred,"—I knew Mr. Hasenflug for some time—and he said, "Fred, what is the matter"—using the very exact language—"with that damn Senator of yours?" I says, "I don't know." He says, "Some of them said that he is going to vote with our side of the house," which was against the bill, he was against the bill, "and others said he was going to vote for the bill." He says, "I wish you would find out and let me know how he stands, if we can get him, so that we can get him; we have got to have him; we need him," something to that effect, and I says, "All right, Connie, I will see what I can do, I will try to find out." The following day, I think it was Monday, I went to the office in the neighborhood of half-past ten or eleven o'clock, something like that.

Q. You mean your office? A. Yes, on William street, and I, if I am not mistaken, I asked the secretary to call up Mr. Foelker and ask him to step around when it was convenient for him, not to come at once, I wanted to see him on important business, as he states there, that I would like to see him; and within an hour or two afterwards Mr. Foelker came there, and I let him in the office, and I says, "Otto, how do you stand on this race track bill?" I said, "I had a telephone call from Connie Hasenflug yesterday afternoon; how do you stand on this rack track bill; they want you very bad." He says, "What do you think about it?" I said, "Let me tell you, if you ever have any more political aspirations, it will kill you, but if you don't care anything about politics, you know what the general talk is, you know what the

general opinion is, why then, of course, you can vote as you please;" and he said, "Well, I will tell you what I will do, I will talk to Al. Hobley about it." So then the following day I met Mr. Hobley and I told Mr. Hobley, "What do you think, Hasenflug called me up; they want Foelker very badly." He says, "I will attend to him; you leave him to me." I then called up Hasenflug and told him, "Any future communication you may have with Hobley," for the reason Hobley lives in the very Senatorial district, in his Assembly district, where he actually named Foelker for Senator, and I thought that he could handle him a great deal better, and I says, "You had better see Hobley about it." That is the only time I ever saw Senator Foelker, the only time I ever spoke to him about the race track bill, and that is about the whole story. Of course we had other conversation, I don't remember exactly, as I told him that rumors were afloat there was a pile of money, some of them say a million dollars, some of them say half a million dollars, but that is about it. There was nothing said—there was never anything said to him about getting forty-five thousand or fifty thousand dollars; that was never mentioned.

Q. Is there anything further that you think of? A. That is about it; that is all, Governor.

Q. In this first conversation which you had with Senator Hasenflug over the phone—you had known the Senator for some time, had you? A. Yes, sir.

Q. He was in the Senate at that time? A. Yes, sir.

Q. Representing a Brooklyn district? A. Yes, sir.

Q. And in this conversation which you had with him over the phone, I do not call for it verbatim, but in substance, was anything said by Mr. Hasenflug, or suggested, which led you to believe when he said "we must have him," that what he wished you to do was to feel of Foelker and see whether he was in a receptive mood or not? A. Well, when Senator Hasenflug called me up and told me, "We need him, we must have him, we need him," why I naturally presumed that that was the general opinion all around, that they tried to get the votes for a consideration; I presumed that; I may be mistaken.

Q. That is what you gathered, was it not, Commissioner, from

your conversation with Hasenflug? A. No, Mr. Hasenflug, Connie never said anything about money; he simply said, "We need him and we must have him;" that is all.

Q. Of course, I do not care for your impressions or inferences, except in so far as they were based upon something said in the conversation. Well, now, when you had this conversation with Senator Foelker, what did you say to him in regard to Senator Hasenflug's statement, "We need him and have got to have him?" A. Well, I told him that they wanted him very badly, that they needed him. That is what Senator Hasenflug told me.

Q. Then you said to him that if he was going to stay in politics, he would have to vote for the bill, because the people in the district were for the bill? A. Yes, sir.

Q. And that if he was not going to stay in politics, what then? A. Then he can vote as he pleases.

Q. He could vote as he pleased, anyway? A. Yes, sir.

Q. But if he was not going to stay in politics, he could do as he pleased? A. Yes, sir.

Q. That is, he could do—— A. It would not do him any political harm; that is what I meant to say, he would not ask any more favors of his constituents, and he could do as he pleased about it then.

Q. That is, that he was then at liberty to make such terms or do as he pleased with the people who were opposed to the bill, is that right? A. Well, I would not say that particularly; I have my own opinion, but then I would not say that.

Q. Didn't you say to him that rumors were afloat that there was a large amount of money raised to beat this bill? A. Yes, sir.

Q. And that if he was not going to stay in politics, why, he might as well take advantage of it, or words to that effect; I don't mean those exact words, but that in substance? A. I really could not say that, Governor, because it might have been said as well by him as by me, I don't know.

Q. Was it said by either of you? A. I do not really recall that.

Q. Here you are, you two men; just see if I can draw the picture back to your mind; perhaps that would aid you in refresh-

ing your recollection, because it is some time ago; you and he were having a conversation in regard to this matter? A. Yes, sir.

Q. And you had told him that if he was going to stay in politics, he had to vote for that bill, because the people of the district were for it, and if he voted against the bill, he was down and out politically? A. That is correct.

Q. There were talks and rumors of large amounts of money raised to beat this bill? A. Yes, sir.

Q. That Hausenflug said they needed him and had got to have him? A. Yes, sir.

Q. "Now, Otto, if you are not going to stay in politics, you can do as you mind to, as you like?" A. I just want to ask you a question.

Q. Is that the fact? A. I don't know that it is really necessary for either of us to mention that, because either of us knew enough about those matters, he probably knew enough, and I certainly did, that if he voted that way, that it naturally would come; I don't know that even it was necessary to mention it.

Q. You mean by that, that of course he could take advantage of anything that was going, if he was going to vote against the bill? A. Yes, sir.

Q. And that was what you meant to convey to him, and what your understanding was when you said that if you are going to vote against the bill, and you are not going to stay in politics, of course you can do as you mind to? A. That is correct; I knew, Governor, that he knew as much about it as I did, and I knew enough not to mention that, that he knew that if he voted against the bill, that automobiles or whatever it may be, or airships, I don't know what was coming; I felt that we knew that any man that voted against the bill done it for a consideration, for something, anyway—I don't know.

Q. He testified before the Committee that previous to that time he had been approached by Senator Gardner on his way down from Albany just previous to this Monday when you had your conversation when he was returning from the session of the previous week, and that Senator Gardner had sent for him and he had gone into the drawing room in the parlor car and

had a conversation with Senator Gardner, in which Senator Gardner stated to him that he could make it for his financial benefit to vote against the bill, or not to vote for the bill, at least, and that he would give him \$2,000 more than anyone else was getting. Now, did Senator Foelker say to you at this conversation that you had with him down in your office, that following Monday, that he had already been approached upon the matter? A. No.

Q. He did not? A. No.

Q. Never mentioned it? A. I thought I was the first man who asked him. He never mentioned anything of the kind to me; he never mentioned Senator Gardner.

Q. Now, when you reported over the phone to Senator Hasenflug in regard to the conversation which you had had with Senator Foelker, didn't you say to Senator Hausenflug in substance, "I have seen Foelker and I think you can get him?" A. Yes, sir.

Q. And referred him to Mr. Hobley? A. Yes, sir.

Q. Now, after that time, did you have any talks or conversations with Hobley in regard to it? A. No, sir.

Q. Did Mr. Hobley send any word to you in regard to it? A. No, sir.

Q. As to how the matter was coming out with Foelker? A. No, sir.

Q. Now, when the vote was taken at the regular session, Foelker voted for the bill, did he not? A. Yes, sir.

Q. Did you have any conversation with him afterwards about that? A. No, sir.

Q. Did you have any conversation with Hobley about it? A. No, sir.

Q. Or with Hausenflug? A. No, sir.

Q. Well, noticing that he had voted for the bill — I will make this suggestion in order to refresh your recollection — do you recall whether or not the next time you saw Hobley or Hasenflug, you did not speak to them something about Foelker's action in voting for the bill? A. No, let me tell you, I was never particularly interested in that bill, I never cared which way it went. The only time I ever heard anything was when we came

from Chicago at the National Convention, I heard a talk on the train where Hobley had mentioned certain things, not in my presence, I only heard it outside.

Q. Did Hobley say anything to you? A. No; and I understood that Hobley made a certain remark about Senator Foelker, which a good many claimed was not prudent just at that time, and they came to Hobley and asked Hobley to keep quiet about it and not say anything more about it; and I wanted to know what it was; it was a certain charge that Hobley made, what it was I really don't know.

Q. And who told this to you, Commissioner? A. In the car?

Q. Yes. A. It was the general conversation there; there were a good many folks; there were some Albany people and New York people and Brooklyn people in the car; the car was full.

Q. Did anyone tell you who had heard Hobley make the statement? A. No.

Q. Now, Commissioner, it is not probable that the Committee will convene again here for the purpose of giving you an opportunity to testify again, and on behalf of the Committee, I want most earnestly to urge you as a duty which you owe to the Committee, to yourself, and to the people of the State, to give us any other fact with relation to this transaction, of which you have knowledge, and if there is any other fact which you have omitted, I want, as I said, most earnestly, you to give it to us now. A. I would be glad to give it to you. I heard a lot of stuff outside, but that is all hearsay; I could not even hardly remember who said it.

Q. That I do not care for, but I want to know if there is any other single fact? A. Of my own knowledge and experience, I could not tell you anything else; the only conversation I had with Mr. Foelker was that one in the office for half an hour; never spoke to him afterwards about it, never spoke to Hobley; never met him as he claims there with Swasey and Hobley together, and the only time I spoke to Hasenflug about this whole matter was the time when he spoke to me over the phone, and then I called him up again and told him that I had seen him.

Judge BRUCE: Any question you wish to ask, Mr. Merritt, or any member of the Committee?

By Assemblyman TOOMBS:

Q. Mr. Schroeder, who asked Hobley to keep quiet about this matter, on the train? A. I could not really tell you now; I could not call him by name.

Q. You stated that somebody asked him to keep quiet about the matter of the report to Senator Foelker? A. There was a newspaper man on that very train, and he was very anxious to get hold of something like that, and they told him to be quiet about it. I was not present when Hobley said that. This thing came about when Governor Hughes was candidate for President, and coming home, somebody suggested Foelker is going to be the candidate for Governor, and Hughes has named him; he is the choice of Hughes; he is going to get the nomination, and Hobley took it seriously, and he commenced to talk out against Foelker, and said certain things which I did not hear.

Q. Then you asked Hobley to keep quiet about it? A. No, I did not say that.

Q. I understood you to say that? A. No, sir.

Chairman MERRITT: Anything else?

By Senator WAGNER:

Q. Do you mind me asking you one or two questions, Commissioner? A. Certainly.

Q. Do not indulge in assumptions; just try to give me the facts? A. Yes, sir.

Q. When Mr. Hasenflug spoke to you over the phone, did he say anything in his conversation to you, about payment of money for a vote? A. Never.

Q. Not a word? A. No, never mentioned it; the only strong word was he said, "We need him and we have got to have him; we have got to have the vote." That is the only strong word he used over the phone.

Q. Now, you said that you assumed there was to be money paid; was that an assumption that you gathered from the newspapers — A. Yes, from the general talk.

Q. From the general talk? A. And general conversation.

Q. But you do not know anything definite about that, do you?
A. No, sir, only from the general talk.

Q. Did you say anything to Senator Foelker, at all, to him, that he would get money if he voted against the bills? A. No, sir.

Q. Was that subject discussed at all? A. Never was mentioned. The only thing that was mentioned was this, that, as I said before, I told him, "Otto," I said, "If you vote against that bill, it will kill you politically; if you don't care anything about politics, vote against it, vote the other way; that is a matter of your own choice," and I assumed that he understood very well what I meant.

Q. By "understood," do you mean that there was something in your mind, and you thought there must have been something in Otto's mind? A. Yes, that is the idea.

Q. But it was not the result of any conversation that you had? A. No, sir.

By Assemblyman FOLLY:

Q. Did you have any conversation with Senator Gardner about the payment of money to Senator Foelker, or anybody else? A. No, sir; never.

Q. Did you have any conversation with Senator Gardner about the race-track bill? A. Never had a conversation with Senator Gardner, in fact, about anything, that whole year; when I used to come up to Albany he was with Senator McCarren and I hardly ever met him.

By Vice-Chairman BROUGH:

Q. And when he said to you, "We need his vote," to whom do you supposed he referred; did he tell you? A. No, he told me to see how Foelker stood.

Q. You knew how Hasenflug stood? A. I knew, he told me, he said "We need his vote."

Q. Whom did he mean by "we?" A. He meant himself, and I might say, if I do not put it too plainly, the Democratic party; that is what he said, "we Democrats;" I don't know that he said that particularly, but I understood it that way, that —

Q. You did not finish. A. He said, "We need his vote." I

understood what he meant, and he meant just what he said; he meant McCarren and company or Grady and company, whoever they may be.

By Assemblyman FOLEY:

Q. He did not say "Democratic party?" A. No, sir.

Q. It was only an inference? A. It was only an inference on my part.

By Senator WAGNER:

Q. That was only an assumption in your mind? A. I don't think I made any mistake about it; I think he meant just what he said.

By Vice-Chairman BROUGH:

Q. Your experience justified you in referring it to that? A. Yes, sir.

By Assemblyman FOLEY:

Q. You knew the Democrats voted for the bill? A. Yes, sir.

Q. And it was not a party measure in any sense? A. No, sir.

By Assemblyman TOOMBS:

Q. Why did you state to Senator Hasenflug that you thought he could get Foelker's vote? A. Foelker was in a quandary about it. He asked me what I thought about it, and he says, "I am going to talk to Al."—that is, Hobley—"about it;" and when a man is in that position a good strong talk might turn him, and I thought he might get him.

By Mr. KRESEL:

Q. Did you think a talk would turn him? A. I did not know that a talk would turn him; no, I do not think that would, but Hobley being his sponsor, I thought if Al. favored him it would please him, and he would vote that way, that is what I thought; I was not very positive about it.

By Assemblyman COLNE:

Q. If I understood you, you said most positively that Foelker in no way whatever made reference to having been previously approached, or that other people had been seeking him to vote on the proposition; he made no mention whatever of it? A. Absolutely not; never mentioned it.

Q. Never mentioned it in any way, by inference or otherwise?

A. No, sir, never; in any way, shape or form.

Chairman MERRITT: Is that all?

Judge BRUCE: That is all.

Adjourned.

SIXTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, October 22, 1910 — 10:30 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, ESQ.,
ISIDOR J. KRESEL, ESQ., } *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Chairman, I have no witnesses available this morning whom I wish to examine. Mr. James E. Gaffney, however, is here, who wishes to make a statement for the record, as I am informed by him.

JAMES E. GAFFNEY, called as a witness, being duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. You have not been subpoenaed to come here, have you, Mr. Gaffney? A. No, I have not.

Q. And you attend here on your own motion for the purpose of making a statement for the record? A. I do.

Q. Where do you reside, Mr. Gaffney? A. At Lawrence, Long Island.

Q. What is your business? A. Contractor.

Q. Now, you have the opportunity to make such statements as you wish? A. First off, I would say, Mr. Chairman and gentlemen of the Committee, I have read in the papers that Mr. Elder, of Brooklyn, made a statement, where some man named Gardner said that I handled \$125,000, or some amount of money.

Chairman MERRITT: Would you like to have the records read?
The WITNESS: I would.

Chairman MERRITT: As that is the object of your appearance, counsel will probably be willing to read into the record that statement.

Judge BRUCE: I show you, Mr. Gaffney, page 1317 of the record, where the evidence to which you refer appears. Mr. Elder's testimony upon that page is as follows: "He said that a dispute afterwards arose as to who should handle this money; that \$125,000 of it was handled by Jim Gaffney; and he said that that money was to take care of either three or four — I have forgotten whether he said three or four — but one or the other, three or four members of the Legislature; as he said 'Tammany men in the Legislature.' He said that of this sum Grady only got \$4,000. He said, 'You can imagine how much the others got if he only got that.' He said he didn't know where the rest of the \$125,000 went."

The WITNESS: That is Gardner — Elder says Mr. Gardner says that?

Q. Yes. A. If Mr. Gardner said that to Mr. Elder, Mr. Gardner is a liar. I know nothing, absolutely nothing, about race-track legislation; had nothing to do with it; it didn't concern me; don't know how he could say such a thing. If Mr. Gardner is in this room — if he walked in the room I would not know Mr. Gardner. Don't know anything about him; and if he did say that, he is a liar. That is all I can say, Mr. Chairman and gentlemen of the Committee. I don't know anything about it, absolutely nothing.

Senator WAGNER: Did you ever give Senator Grady \$4,000 with reference to that?

The WITNESS: I never gave Mr. Senator Grady four thousand cents.

Assemblyman FOLEY: Did you ever receive \$125,000, or any other sum?

The WITNESS: Never did.

Assemblyman FOLEY: In connection with this legislation?

The WITNESS: Didn't know anything about it. I don't see why they should give me \$125,000.

Senator BROUGH: Were you in Albany at the time that bill was up?

The WITNESS: That was in 1908. I was in Albany, I think, but I don't know whether it was in March or in April. Going through to Troy I stopped at Albany, went into Keeler's and had my lunch, and went on to Troy on business, to a little town outside of Troy on some private business. Never spoke to anybody, never seen any of the Senators, and never spoke about race-track legislation.

Judge BRUCE: Anything further you wish to say?

The WITNESS: No.

Assemblyman TOOMBS: Mr. Gaffney, did anyone ever ask you to use any influence among your acquaintances to affect race-track legislation?

The WITNESS: Absolutely not. They didn't dare to do such a thing; no Assemblyman or Senator. Why should they?

Assemblyman COLNE: You were not interested, Mr. Gaffney, in any way in the passage of these bills?

The WITNESS: No, sir. It didn't interest me in any way. I was too busy a man to be fooling around with them things.

Judge BRUCE: I do not wish, as counsel of the Committee, to examine Mr. Gaffney at this time. That is all you have to say, Mr. Gaffney?

The WITNESS: Yes.

Judge BRUCE: Thank you.

Chairman MERRITT: That will do, Mr. Gaffney. The Committee — various members of the Committee are candidates for office, and have certain obligations to their constituents, to their parties, to their friends, and so forth, and incidentally to them-

selves, as somebody has suggested; and we are now within two weeks of election day and it has been decided by the Committee that it will not hold any further public hearings, although the work of counsel will proceed, and such other matters as may be incident to the proceeding outside of public hearings, until after election. The Committee will now stand adjourned until Wednesday, November 16th, in this chamber, at 11 o'clock.

Adjourned until Wednesday, November 16th, 1910, at 11 A. M., Aldermanic Chamber, City Hall, N. Y.

SEVENTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, November 18, 1910 — 11 A. M.

Present—HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ISIDOR J. KRESEL, Esq., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

ORLANDO A. JONES, called as a witness, being duly sworn,
testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Jones? A. Sea Gate, that is my home.

Q. New Jersey? A. No, Sea Gate, New York Harbor, New York.

Q. What is your business? A. I am a member of the Consolidated Exchange, also a member of the Metropolitan Turf Association.

Q. Where are your offices? A. My office is in my house.

Q. How long have you been a member of the Metropolitan Turf Association? A. Since its existence.

Q. And when was it organized? A. I can't recall exactly the date.

Q. About when? A. Ten or twelve years, it might be longer.

Q. Of what does it consist? A. It consists of a body of men, not incorporated.

Q. And how many members has it at the present time if you recall? A. It originally consisted of two hundred, I think, now it is probably one hundred and twenty-five.

Q. And what is the purpose for which it is organized? A. Well, the original purpose was to improve the breed of horses.

Q. Does the association have an interest in or own any race-tracks in this State or elsewhere? A. No, sir, no, I think not; they do not.

Q. Is the association interested in or does it own any stables in this State or elsewhere? A. No, sir.

Q. Does it own any horses in this State or elsewhere? A. No, sir.

Q. Has it ever owned horses or stables in this State or elsewhere? A. No, sir.

Q. In what way, then, does it exercise its purpose of improving the breed of horses? A. well, it is a long story, and I don't know how to start it exactly. At one time they contributed to the racing associations.

Q. Well, is that all there is to this long story? A. Well, that is about the end of it.

Q. It was not as long as I had anticipated? A. Well, it is hard to start.

Q. When did it make these contributions? A. Well, I could not state exactly when, a number of years ago, seven or eight years.

Q. For what purpose? A. Well, the association bought a certain number of tickets that were placed in the box, the entrance box to the racing associations. I assume that was to enable the race tracks to give fair sized purses, and enable the horses to get more money for running.

Q. How many tickets did they place in a box at any one meeting? A. Do you mean one entire meeting or one day?

Q. One day? A. Well, I could not recall exactly, it might have been to the amount of \$500.

Q. And did this continue for every day of the meeting? A. Well, whatever tickets they paid, the amount was the same every day.

Q. And was this contribution made to all the jockey clubs in this State in this manner? A. Well, these tickets were bought each day for each meeting.

Q. Of the different racing associations? A. The different racing associations.

Q. For how long did that practice continue, how many years? A. Well, I could not tell you exactly; it has been so long since I officiated in any capacity that I have forgotten it.

Q. Did it continue for a number of years? A. Yes, yes.

Q. And has it continued recently? A. No, sir.

Q. How long since it was discontinued? A. There was a sort of disagreement with the racing associations and I cannot recall exactly the day, but from that time the contributions ceased.

Q. How many years ago do you think that was, Mr. Jones? A. It must have been seven or eight.

Q. And have they made any contributions in this manner or otherwise to the association since that time? A. No, sir.

Q. Why did they adopt this method of making the contributions, instead of making them direct? A. Well, I presume they had a perfect right to buy what tickets they wanted, and they did it in that manner.

Q. Do you know why they adopted this method? A. No, sir.

Q. It seems rather an indirect way of making a contribution to the associations of \$500 per day to each meeting of each association, and I want to know if you knew why they adopted the method of buying tickets and placing them in the box, rather than making the contributions direct to the treasurers of the association? A. It has been so long since those things took place that my memory is not exactly acute on it.

Q. You were a member of the executive committee at that time? A. I was treasurer.

Q. And a member of the executive committee? A. Yes, sir.

Q. And under the by-laws or rules of the association the exec-

utive committee had full power in relation to such matters, did it not? A. No, the body voted.

Q. You mean the body voted? A. Yes, sir.

Q. As to whether or not the contributions should be made? A. The body voted that they should buy so many tickets each day.

Q. Now, when did you first become a member of the association? A. I first became a member of the association when the association was formed.

Q. When did you first become an officer? A. The same time the association was formed.

Q. What office did you first hold? A. Always the same, treasurer.

Q. And for how many years did you continue as treasurer? A. I continued from the day of its formation up to, I think, six years ago; it might have been seven.

Q. And you think that would be about how many years in all that you held the office of treasurer, Mr. Jones? A. Six or seven years.

Q. Who was the president of the association during the time you were treasurer? A. We have no president, we have a chairman.

Q. Who was the chairman? A. Mr. George Wheelock.

Q. Did he continue to hold the office of chairman as long as you held the office of treasurer? A. We went out together.

Q. And went in together, did you? A. Yes, sir.

Q. What other officers were there besides the chairman and the treasurer? A. There was a secretary.

Q. Can you tell me who was the secretary during the time that you were treasurer of the association? A. Mr. Tim Sullivan.

Q. And did he take office at the time that you and Mr. Wheelock took office? A. Yes, sir.

Q. And continued as long as you did? A. Yes, sir.

Q. And then his office terminated at that time? A. No, sir, he is still secretary.

Q. Has the association any other officers than those of chairman, treasurer and secretary? A. They consist of five members of the executive committee, who elect the chairman.

Q. Is this executive committee made up of five members of the

association in addition to the chairman, the treasurer and the secretary, or is the executive committee made up of the chairman, the treasurer and the secretary and two members, making a body of five? A. Yes, sir.

Q. The latter statement is correct? A. Yes, sir.

Q. Who succeeded Mr. Wheelock as chairman? A. Mr. Burke.

Q. You don't refer to Senator Tim Sullivan, do you? A. No, sir.

Q. How long did Mr. Burke continue as chairman? A. He succeeded Mr. Wheelock, I think six years; he has been in possibly six years.

Q. And he is now chairman? A. Now chairman.

Q. And can you tell me who succeeded you as treasurer? A. Mr. Evans.

Q. And does he still continue to hold the office? A. Yes, sir.

Q. What was his first name? A. I think it was Thomas.

Q. And who succeeded Mr. Sullivan as secretary? A. Mr. Sullivan is still secretary.

Q. Does the association have a club house? A. Yes, sir.

Q. Where is it situated? A. On 45th street, between Sixth avenue and Broadway.

Q. Does the association have any other offices or quarters other than the club house? A. Well, I believe some of the individual members have offices.

Q. I mean the association itself? A. No, sir.

Q. Do they own any property or rent any property connected with the tracks of the different racing associations? A. No, sir.

Q. Well now you say that at the time the association was organized it had about two hundred members? A. Yes, sir.

Q. And you think it has a larger membership now? A. No, much smaller.

Q. A much smaller membership now? A. I think there are probably fifty or seventy-five members less.

Q. Now the business of the members of the association is that of laying odds on the races at the tracks, is it not? A. Yes, sir.

Q. If I were to be permitted to use a popular term, would I be correct in saying that prior to the passing of the anti-racing

bills it was known as the Bookmakers Association? A. They never called them the Bookmakers Association.

Q. I say if I were to use a popular term, would that be correct? A. Yes, sir.

Q. What did they term themselves? A. They termed themselves layers.

Q. Now, prior to the passing of the anti-racing bills how was the business of the various members of the association conducted, if you can tell me, just briefly for the record? A. What do you mean — conducted where?

Q. At the tracks? A. Well, they did — the original method, they had what they called booths, and after that was done away with they sat on chairs and had a small slate on which they posted the prices.

Q. In other words, prior to the passing of the Anti-Racing bill, they made what is properly termed books in various ways? A. Yes, sir.

Q. What was the price of those tickets that were deposited in the box, do you recall, Mr. Jones? A. Whatever the admission was.

Q. The admission was uniform at the various tracks, was it not? A. Yes, sir; whatever the admission was they bought the admission tickets and put them in the box.

Q. What was that admission, if you recall, usually? A. I think it was two dollars.

Q. Now, did the association from time to time levy assessments upon the members of the association for the various purposes and expenses of the association? A. Yes, sir.

Q. Now, who had the power to levy those assessments? A. The body voted.

Q. The body voted on each particular assessment? A. Yes, sir, a meeting was called and they voted.

Q. Now, after they had voted for the levying of an assessment, how was that assessment levied and collected? A. The secretary collected it.

Q. And notified each member, I presume, that an assessment had been made, and proceeded to collect it? A. They never notified the members, they just simply approached the member,

and stated the body had authorized so much to be collected, and he would simply ask for the amount and the member would give it to him.

Q. And was the assessment usually paid by check or paid in cash, do you recall? A. Paid in cash.

Q. And was it usually paid by the individual member himself, or by his representative or cashier? A. Of course some paid themselves, and others paid through their cashiers.

Q. What method did you adopt? A. My cashier.

Q. Who was your cashier? A. Henry J. Keiser.

Q. Where does he reside? A. He resides at Sea Gate, also.

Q. At the time these payments were made by Mr. Keiser on your behalf, did he then state to you the fact of the assessment and the amount, or did he attend to the entire matter himself?

A. I knew what the assessments were during those years, because I was the treasurer.

Q. Subsequent to that time did you know? A. Subsequent?

Q. To the time you were treasurer, what the assessments were?

A. The assessments were always stated at the meetings. Whenever there was an extra assessment, or whatever the assessment was to be, it was finished at the meeting, passed at the meeting, so every member who was present knew what the assessment was.

Q. Did your cashier come to you and receive from you the cash for the assessment, and then make a return to you as treasurer?

A. My cashier always carried the money and paid it out.

Q. And reported it to you as a disbursement? A. No, there was no report made, because I knew perfectly well what the assessment was.

Q. Well now, who disbursed the funds thus raised by assessments? A. Do you mean who bought the tickets?

Q. No, who disbursed the funds that were raised by assessment. If an assessment was levied and a fund raised, who was charged with the duty and responsibility of disbursing it? A. The only funds that were raised while I was treasurer were raised for the purpose of buying tickets.

Q. No assessments were levied for any other purpose? A. Not that I remember.

Q. Well now, subsequent to that time, after you ceased to be

treasurer, assessments were made from time to time, were they not? A. Yes, there were assessments made from time to time.

Q. Now who had the duty and responsibility of disbursing those assessments, what officer or officers of the association?

A. The executive committee transacts all the disbursements.

Q. They had absolute authority in that respect? A. Absolute authority.

Q. They never made any reports to the body from time to time? A. They never made any reports to the body.

Q. What were the regular dues of the association? A. \$25 a year.

Q. And had the association any other sources of income other than the regular dues and assessments made from time to time? A. No.

Q. Now do you recall that there were pending in the Legislature of 1908 bills which were known as the anti-racing bills, do you not, Mr. Jones? A. Yes, sir.

Q. You recall that those bills seriously interfered with the business of the association as it had been previously conducted, did they not? A. Yes, sir.

Q. In other words they practically put the bookmakers out of business, did they not, these bills? A. In a measure.

Q. And I may presume I am correct in saying that the members of the association were opposed to the passage of the bills? A. Naturally.

Q. And that they considered that the passage of these bills would be detrimental to their business, is that correct? A. Yes, sir.

Q. Now, do you remember that this bill, the particular bill of which I am speaking, was pending in the Legislature of 1908? A. 1908?

Q. Yes, during the session of 1908, which began in January and ended, the regular session, on the 23rd day of April; a special session was called which convened early in June or late in May — I have forgotten the date, and adjourned on the 12th of June; that at the regular session the vote upon the bill was a tie — do you recall that? A. Yes, sir.

Q. And that at the special session, there having been an addi-

tional Senator elected, a vacancy existing in the Niagara district, that the bills were passed with just the number of votes necessary to carry them through the Legislature. Now, Mr. Jones, was an assessment levied by the association for the purpose of defeating those bills? A. No, sir.

Q. *Was an assessment levied by the association for the purpose of raising funds in order to present the views of the association to the Legislature in relation to these bills?* A. *I think not.*

Q. Was any money contributed by members of the association, either as members or individually, to your knowledge, for the purpose of presenting the views of the association or any of its members to the Legislature in reference to these bills? A. No, sir.

Q. Did you directly or indirectly, by yourself or through your cashier, make any contribution to any fund whatsoever for the purpose of hiring attorneys or other persons to present the views of the association with reference to these bills? A. Well, that is a very broad question.

Q. Yes, I intended to make it so. A. The executive committee has power to levy any assessments they wish to make. Now, there were assessments levied for the lawyers. That I say indirectly. The lawyers were very much harassed during those times, and it was necessary to employ lawyers.

Q. I thought so, Mr. Jones, and that is the reason I asked the question in that form. Now, will you kindly tell me all about it, the assessments levied, the amount raised — I am not insinuating that it was for illegitimate purposes, I take you at your word that it was for the purpose of hiring lawyers and other persons to present the views of the associations. Will you kindly tell me what it was? A. The assessments raised varied according to the number of men that employed themselves at one time. If there were twenty men trying to make a living, the twenty were assessed, and it varied according to the number of men.

Q. Now, tell me, Mr. Jones, frankly, or tell the Committee rather, what was done in 1908? A. 1908?

Q. Yes. A. With reference to what?

Q. With reference to the Anti-Racing bills, for the purpose of hiring lawyers for the purpose of presenting the views of the

associations to the Legislature with reference to these bills? A. Well, I absolutely know nothing in reference to what was done. The executive committee has absolute power, whatever they get they do what they please with it. The members know nothing.

Q. That is undoubtedly true; I understand that, Mr. Jones, but what I want to know from you is how much you contributed toward these assessments? A. I can't tell you, I haven't the slightest idea.

Q. Who would know, your cashier? A. Well, he should know.

Q. Well now, if I recall correctly, you stated a few moments ago that when these disbursements—I asked you particularly whether your cashier assumed the responsibility of making the payments and including them in his expense accounts, and you said no, you knew every assessment, and how much it was. Did he from time to time make payments of assessments, and charge it into your expense account? A. Don't get the two items confounded. You spoke before with reference to the time when I was treasurer. Then I knew exactly what the assessments were. After I ceased to be treasurer I didn't know.

Q. After you ceased to be treasurer, what the amounts of the assessments were from time to time you didn't know? A. No, sir, I could have known, but I didn't bother myself.

Q. That is, they were paid by your cashier? A. By my cashier.

Q. And charged in the account of expenses? A. Called expenses.

Q. Mr. Keiser was your cashier in 1908? A. Yes, sir, I think he has been in my employ for seven years, I think.

Q. Now, in the conduct of your business as you have stated it, Mr. Jones, you kept books, did you, I mean books of account? A. You mean the daily business?

Q. Yes. A. Well, we kept the daily business, yes.

Q. And these expense accounts that were rendered to you from time to time by Mr. Keiser, they were in writing, were they? A. Yes, sir.

Q. And you have them, have you? A. No, we never kept them; the daily transaction was over. After the day is over that is settled, that day's business is settled; we didn't keep the sheets.

Q. Well, did you keep general books of account, that show your general business outside of the daily transactions? A. We generally keep what is owing, that is all.

Q. Did you keep books in which would appear your expense accounts from time to time? A. No, sir.

Q. Mr. Keiser is at Sea Gate now, is he? A. Yes, sir. There is a small sheet that are issued, and on the sheet they utilized it for expense accounts, and winning and losing, and what is owing, what we have to pay, and what we have to collect. The next day that is destroyed. They never keep those.

Q. Is Mr. Keiser now in your employ? A. No, sir.

Q. He is not? A. No, sir.

Q. May I go to the extent of troubling you to ask him if he would attend here to-morrow before the Committee at 11 o'clock? A. Yes, sir, to-morrow?

Q. To-morrow at 11 o'clock. I will appreciate it very much? A. I will do so, I can reach him.

Q. Did the association during the past few years have a regular counsel, do you know, Mr. Jones? A. I think they have, I think they have Davies, Stone & Auerbach.

Q. Do you remember any other counsel that they have retained? A. I think Mr. Delancey Nicoll.

Q. Do you know whether any other means were adopted by the association to present their views with reference to these bills to the Legislature other than the employment of attorneys? A. No, sir.

Q. You don't know whether or not they employed any legislative agencies, or other means of bringing to the attention of the Legislature their views? A. No, sir.

Judge BRUCE: (To witness.) I would appreciate it very much if you will notify Mr. Keiser to be here to-morrow at 11 o'clock.

Judge BRUCE: Mr. Hitchcock.

FRANCIS R. HITCHCOCK, called as a witness, being duly sworn by the Chairman, testified as follows:

The WITNESS: Judge Bruce, before answering any question I want to make a short statement to the Committee.

Judge BRUCE: Proceed.

The WITNESS: Gentlemen, I appeared this morning before your Committee because I supposed that the subpoena served upon my brother was intended for me, inasmuch as he has had no connection with the racing interests in the State of New York, as I have had. For your convenience, therefore, I came here prepared to receive a subpoena; and, although I have been advised by counsel that I have the right to refuse to testify before you for the reason that your Committee has no authority to make the inquiry upon which it has entered, I have determined for the present to testify in accordance with the requirements of the subpoena.

Direct-examination by Judge BRUCE:

Q. In making out the subpoena the wrong first name was filled in, due to inadvertence; since that time the name has been changed on the subpoena, and you have been regularly subpoenaed? A. Yes, I have been regularly subpoenaed.

Q. Where do you reside? A. In New York city.

Q. What is your business? A. I am Treasurer of the Coney Island Jockey Club. I assume that is my principal business.

Q. Where is your office? A. Windsor Arcade.

Q. The Coney Island Jockey Club is what? A. It is an organization for the purpose of holding race meetings.

Q. It has its tracks where? A. Sheephead Bay, Long Island.

Q. And has been in existence how long, Mr. Hitchcock? A. Well, I fancy twenty-five years, perhaps.

Q. And how long have you been connected with it? A. Since July, 1908.

Q. Have you been an officer, — are you an officer of the club? A. I am treasurer of the club.

Q. How long have you held that position? A. Since July, 1908.

Q. Prior to that time were you a member of the club, or association? A. Oh, yes, I have been a member of the club for many years.

Q. That was what I referred to. How long have you been a member of it? A. Eight or ten years, I fancy.

Q. It is an incorporated club? A. Yes.

Q. Who is its president? A. Mr. Schnyler L. Parsons.

Q. And how long has he been president? A. He was presi-

dent before I was elected treasurer. I think three years; I am not sure.

Q. What other officers has it besides a president and treasurer?
A. It has a secretary.

Q. Who is the secretary? A. Victor E. Schaumberg.

Q. And has he held that office for some time? A. He has held it since the death of Mr. Fellowes, and I think that was about two years ago.

Q. Does that constitute all the officers except the board of directors? You have a board of directors, I presume? A. Yes, and an executive committee of the board of directors.

Q. Who composes the executive committee? A. At the present?

Q. Yes. A. The officers, and my brother Thomas Hitchcock, and Herbert C. Pell. I think that is all I recall.

Q. Do you recall how many members of the association there are approximately? A. Club members?

Q. Yes. A. I think about eight hundred.

Q. And where are the offices of the association? A. In the Windsor Arcade.

Q. What are the dues of the members of the association or club, if there are any? A. \$25.

Q. A year? A. A year.

Q. Has it any other source of income than these dues, and the results of the racing at the track; that is, the admissions and fees that are paid for entries? A. Yes, the income of its surplus, and the rent of its real estate.

Q. Are assessments ever levied upon the members of the association, or have they been from time to time? A. Not to my knowledge.

Q. I presume, as treasurer you kept books? A. Yes, they are kept for me.

Q. You have those? A. Yes, they are up in the office.

Q. Also those of your predecessor? A. I presume so.

Q. And the secretary, I assume, keeps the minutes of the proceedings of the club from time to time? A. Yes.

Q. How often does the executive committee meet? A. Once a month.

Q. Minutes of the meetings of the executive committee are kept by the secretary of the club? A. Yes, sir.

Q. And does the club hold an annual meeting? A. An annual meeting of the stockholders.

Q. Was there any meeting held during the year of the members of the club itself, outside of the stockholders? A. No, sir.

Q. Well, then, the minutes of the secretary and the books of the treasurer are the records of the club, are they? A. Yes.

Q. You recall, do you, Mr. Hitchcock, that there was pending in the Legislature of 1908 bills known as the Anti-Racing bills? A. Yes.

Q. What was the attitude of your club, relevant to those bills? A. We were opposed to them.

Q. You recall, do you not, that at the regular session of the Legislature the vote upon the bills was a tie, 25 to 25; and that a special session was called by the Executive, there having been an additional Senator elected — I am speaking now of the vote in the Senate — there having been an additional Senator elected, the bill was passed at the special session with just the necessary twenty-six votes in the Senate? A. I do recall it, yes.

Q. Robert H. Elder, Mr. Hitchcock, who is assistant district attorney of Kings county, testified before this Committee on October 19th of this year, the evidence appearing in part on pages 1316, 1317 and 1324 of the record; he testified to a conversation which he had with Frank J. Gardner, who previously was a Senator representing one of the Kings county districts in the Senate, in 1905 and 1906. I shall read to you a portion of his evidence that appears on page 1316 of the record. This is a conversation of Ex-Senator Gardner, relating to Mr. Gardner's version of the efforts which have been made by certain persons to defeat the passage of what was known as the "Anti-Race Track Bills" to which I have referred. Mr. Elder testified: "We had a little further conversation upon that, the exact terms of which I do not recall, and finally he said" (referring to Ex-Senator Gardner) "'You know how that money was got together, don't you?' I said 'I have heard various reports about it, but I can't say that I know.' 'Well,' he said, 'I don't mind telling you that there was a meeting at Delmonico's, at which this money was

subscribed.' And he gave to me the names of certain persons whom he said were present at this meeting. He said that James Keene was there; that David Mitchell was there; that Parsons was there; that Harry Payne Whitney was there; that Charles H. Hyde was there, and the representatives of the book-makers were there. I believe he said the Metropolitan Turf Association; and he mentioned some other names of men whom he said were there, but just on the instant now they do not occur to me. I might refresh my recollection on some of those names, Judge Bruce. And he said that a subscription was made up of money to take to Albany to defeat the bills." Then, on page 1324, I suggested to him certain names, and inquired whether or not they were mentioned by Mr. Gardner as having been present at this meeting, to which he replied: "Yes, that is true." Then I asked: "Q. Is there any other name you can remember? A. Yes, he said Hitchcock was there? Q. Was he connected with the Coney Island Jockey Club? A. He didn't designate that. Assemblyman Toombs: What was his first name; there are two or three Hitchcocks? A. I didn't ask; I don't know."

I wish to inquire, Mr. Hitchcock, whether or not you attended, or whether or not you were the Mr. Hitchcock that was referred to in this conversation? A. I don't know if I was the Hitchcock.

Q. Did you attend any such meeting as is referred to in the testimony of Mr. Elder? A. No, sir.

Q. Did you know of any meeting having been held at Delmonico's, or elsewhere, for the purpose of taking steps to defeat what was known as the "Anti-Race Track Bills?" A. No, sir.

Q. Did the Coney Island Jockey Club take any action, to your knowledge, for the purpose of presenting to the Legislature the views of the club with reference to these measures? A. No, sir, I do not; I was not an officer at the time.

Q. You were not an officer of the club at that time? A. No, not until July.

Q. That was after the passage of the bill? A. After the passage of the bill.

Q. But you were a member of the club, weren't you? A. Yes.

Q. Did you know of any action having been taken by the club — I am speaking now of the club itself — for the purpose of

presenting the views of the club to the Legislature, with reference to these bills? A. No, sir.

Q. Do you know whether any funds were raised, or expended, by the club for the purpose of employing attorneys or other persons to present the views of the club to the Legislature, or to any committee thereof, with reference to these measures? A. Yes.

Q. What action was taken? A. I don't know of any action being taken, but they contributed for the expenses, the legitimate expenses, of what might be called lobbying in the popular term, or opposing the bills.

Q. That is, the club did? A. The association.

Q. As an association, or was it done by the individual members? A. Done by the association.

Q. And what amount did they contribute? A. I don't know, sir; I don't recall.

Q. Did you ever know? A. No, it is all in the books, whatever they have spent.

Q. You never knew it? A. No, I never knew the exact amount.

Q. Did you know it approximately? A. No.

Q. Now, did you as an individual, or did any other members of the club, to your knowledge, make personal contributions toward any fund for the purpose of employing lawyers or other means of presenting the views of themselves, or other members of the club, to the Legislature, with reference to these measures? A. No.

Q. Did you know of any other fund having been raised by this club, or by anyone else, for the purpose of impressing upon the Legislature, the adverse views with respect to these bills, other than the fund you have mentioned which was raised by the club? A. No.

Q. Did you make a personal contribution, Mr. Hitchcock? A. No, sir.

Q. To broaden my question still further, at the suggestion of a member of the Committee, do you know of any fund having been raised for any purpose in connection with these bills known as the "Anti-Race Track Bills" other than the one you have mentioned? A. No, sir.

Q. Were you acquainted with many members of the Legislature, Mr. Hitchcock? A. Not at that time, no.

Q. Did you know Ex-Senator Gardner? A. I met Ex-Senator Gardner many years ago but I haven't spoken to him since that session; I haven't seen him.

Q. Did you meet him during the session of 1908? A. No.

Q. Did you see him during that session? A. No.

Q. Have you seen him since that time? A. No, excepting possibly on the street or on the race course; I haven't spoken to him.

Q. Have you had any communications with him? A. No.

Q. Or did you, during the session of 1908? A. No.

Q. You were acquainted with Senator McCarren, were you? A. Oh, yes, I knew him quite well.

Q. Did you have a conversation with Senator McCarren about the bill? A. No, sir, I never spoke to him about it.

Judge BRUCE: That is all, Mr. Hitchcock. Let him call Senator Travis.

EUGENE M. TRAVIS, called as a witness, and being duly sworn by the Chairman of the Committee, testified as follows:

By Judge BRUCE:

Q. Where do you reside? A. 436 Grand avenue, Brooklyn.

Q. What is your business? A. I am in the produce business.

Q. You hold public office, do you? A. I do.

Q. What office? A. Member of the Senate.

Q. You have been re-elected? A. I think so. (Laughter.)

The Police Reports say so, anyway.

Senator WAGNER: One of the few survivors?

The WITNESS: Yes; you know the Senate needs a little seasoning.

Q. What district do you represent? A. The Sixth.

Q. How long have you been a Senator? A. Four years.

Q. Prior to that time had you held public office? A. No.

Q. You were a member of the Senate in 1908? A. Yes.

Q. You recall, do you, Senator, the bills known as the "Anti-

Race Track Bills" which were pending in the regular session, and also in the special session of 1908? A. I do.

Q. You recall that early in January the Anti-Racing Bill was introduced, and that it came to a vote in the Senate on the 8th of April, if I recall correctly, of 1908, and failed of passage, the vote lacking one vote necessary in the Senate to pass the bill? A. Yes, I remember all that you say, but the date I am not positive about.

Q. The vote being 25 to 25? A. Yes.

Q. And you recall there was a vacancy at that time existing in the Senate in the Niagara County District? A. Yes.

Q. And that subsequently the Executive convened the Legislature in special session, and a special election was held to fill the vacancy that existed, and that at that special session the bill was again introduced, and was finally passed about the 11th of June, 1908, with the necessary 26 votes in the Senate; you recall that? A. I remember all that, but I am not sure about the date.

Q. Now, Senator, you voted in favor of this bill, did you not, both at the regular session and at the special session? A. I did.

Q. Were you ever approached by anyone who endeavored to influence your action on these measures, mentioning a financial consideration? A. Well, I would not put it just that way. I was sitting at my desk one morning, and one of the men that I have seen around the Senate Chamber a great many times, came and sat down beside me and opened up a conversation, and finally led up to the race track legislation, and asked me if I knew that there was something doing, that there was a juicy watermelon to be cut. I said, "Yes, I have heard gossip about it." He says, "Well, they need more votes." To which I replied that my vote had already been pledged in favor of the bill, and there was not any further use of talking with me. That ended the conversation.

Q. Who was this person? A. I don't know what his name is. I have seen him around there.

Q. Describe him. A. He was a man perhaps five feet and a half high, a slender fellow with a little black moustache.

Q. How old? A. Oh, I should think 35 to 40.

Q. Was he a member of the Legislature, or any employe thereof? A. No.

Q. What had you seen him doing around the Capitol? A. I had seen him talking with different members from time to time. I presume he probably represented other interests in addition to that. Not necessarily where there was any bribery; but that he may have appeared in the interests of some corporation, or some individual, who may have had some legislation there, and desired to have it looked after.

Q. Did you understand him to be a lobbyist, or a legislative agent of some kind? A. A lobbyist, I understood him to be such.

Q. Do you know Ex-Senator Gardner? A. He preceded me. I fancy I know him. I defeated him in the convention.

Q. Was it Senator Gardner? A. No.

Q. Was it anyone you had seen associated with Senator Gardner? A. No. You mean by that those associated with him at home?

Q. Yes. A. No.

Q. Had you ever seen this man in Brooklyn? A. I think not; I may have.

Q. Had you ever seen him in New York? A. No.

Q. Have you ever seen him elsewhere than in Albany? A. No, sir.

Q. Have you seen him since that time, or since the adjournment of the Legislature? A. Of that year?

Q. Yes. A. I think I saw him the following year; I do not recall having seen him this last session.

Q. That is the session of 1909? A. 1910.

Q. You do not recall seeing him in 1910? A. No.

Q. But you saw him there in 1909? A. Yes.

Q. What was he doing in 1909? A. Apparently the same as before; advocating or opposing certain legislation he may have been interested in.

Q. Did you ever hear anyone address him by any name? A. No, I never did; I may have, I am mighty poor on names.

Q. Do you know in what part of the State he resided? A. No, sir; I fancy he comes from New York; I don't know.

Q. Did you see him talking with other senators? A. Yes, I have seen him talking with other Senators, and members of the Assembly; but he may not have been discussing that subject at all.

Q. Did you see him talking with any other Senators that day?
A. I do not recall.

Q. Did anyone else, directly or in any other manner, approach you with reference to your vote upon the measure, on this subject?

A. Yes, in the special session.

Q. Give me the circumstances in regard to that? A. Why this same man came to me and said there was a man wanted me on the 'phone. I went out to the 'phone and asked who it was, and he said it was Ex-Senator Gardner, and he was exceedingly anxious to have me come down to the Hampton.

Q. Give me the conversation, will you? A. Why, he said he wanted to see me, and asked me as a personal favor and as a constituent, if I would come down to see him. I said if he wanted to see me he could come up to the Capitol; I wasn't going down to the Hampton to see him. I imagined I knew what he wanted. He said that this same man would give me an inkling, or had given me an inkling. I said yes, I know what he wants, and what you want, but I am not coming down to see you. We have nothing in common.

Q. Is that all you recall, Senator? A. Excepting that he said the amount that was intimated by this man would be paid.

Q. Did he say how much that was? A. \$25,000 down before I voted, and \$75,000 that afternoon or evening, or next morning.

Q. That is, after the vote was taken? A. After the vote was taken.

Q. Did he refer to this man by name? A. No, "the messenger" he called him.

Q. Now, Senator, did you ever know the first name of this party to whom Senator Gardner referred? A. No, sir.

Q. And therefore it would not refresh your recollection if I were to suggest a name? A. No, sir.

Q. Did you have any further conversation with Senator Gardner; is that all you recall? A. That is all.

Q. Did this party come to see you again? A. No, sir.

Q. Did anyone else ever approach you in this matter, other than on those two occasions? A. No, sir.

Q. Now, Senator, do you know of any other Senator having been approached with reference to his vote on that measure? A. Why, gossip said that everyone —

Q. I don't care for gossip; did any other Senator or member of the Assembly tell you he had been approached? A. Yes.

Q. Who? A. I would rather not say.

Q. Well, my purpose of inquiring, I will tell you frankly, is to call the Senator whom you may mention, so that I can inquire of him who approached him, and the circumstances under which he was approached. A. I took lunch with Senator Fuller and Senator Carpenter one day, and they said they had been approached; that there had been some intimation that there might be something doing. And one morning I took breakfast with Senator Yates, and he said he had been phoned by a party, who had asked him to come down to see him.

Q. Did any other Senator other than these,—I don't care to go into the conversation because I shall call these Senators, in order that they may give us the information directly as you have given it,—did you know of any other Senator than these, who were approached; other than those you have mentioned I mean? A. I do not recall any other Senator ever having said they had been approached. Of course, I have discussed the subject with a number of other Senators. Then Senator Foelker.

Q. He said he had been approached? A. Well, he said this. He said that he believed there was something in it; that he couldn't afford to vote for it, because his people would be against it. But he did not intimate in that that he was intending to take the money or that he intended to act upon it.

Assemblyman FOLEY: That was before the second vote? A. Don't let the Committee get that idea. He simply gave me to understand that there had been offers made to him.

Assemblyman FOLEY: Was that before the second vote on the bill? A. This was during the first session.

Q. Now, Senator, these conversations which you have related, which were had with you, one in the Senate chamber and one over the phone, with Senator Gardner, at what time did they take place in the session. Before the vote in the regular session? A. The first talk, with that man, was during the regular session; the telephone conversation was during the second.

Q. During the special session? A. Yes.

Q. Now, is that the entire knowledge you have, Senator, with

regard to the manner of an attempt made to influence Senators with reference to their actions upon the bill? A. Yes, sir.

By Chairman MERRITT:

Q. Would you know that man if you saw him again, Senator? A. I think so.

Q. Did you ever know him to be opposed to anything else; did he ever talk to you about any other matter besides the Race Track Bill? A. Yes, I think he had talks with me about other measures he was interested in.

Q. Well, what other measures? A. I don't recall. You know as well as I do that men constantly come up and sit alongside of you. And you occupy a higher position than I do.

Q. Then you don't remember that? A. No, I do not.

By Assemblyman FOLEY:

Q. Was this man ever introduced to you? A. No, they don't ask to be. As you know, they just come up and sit down by you, and start in.

Q. You have a pretty good memory for names, haven't you? A. I have a very poor memory for names.

By Assemblyman TOOMBS:

Q. You say you had seen this man several times talking to other people? A. Yes.

Q. Do you remember who those people were, in order that we may summon them? A. No, I never charged my mind with it. You know, Mr. Toombs, those men are up there, and you don't pay any attention to them; you have your own work to do, and you go and do it.

By Senator WAGNER:

Q. Was he one of the men that was there during the entire session, or was he one that came up just occasionally? A. He was there during that entire session.

Q. During the entire session of 1908? A. I think so.

Q. And 1909? A. I think I remember seeing him there once or twice during 1909, but whether he was there all the time I don't know. I am sure you know, Senator Wagner, there are lots of men around there for all kinds of measures, and you never take the trouble to look for them.

Q. I only wanted to know if he was there during the entire session, or was one of those that came up occasionally on some legislation? A. I think in 1908 he was there, and 1907, practically the whole time.

Q. You have no idea what legislation he was interested in? A. No.

By Chairman MERRITT:

Q. I understand that it was over the phone that the suggestion as to this amount of money was made? A. No, I did not intend to say that. The same individual intimated in the second conversation what he thought should be done.

By Judge BRUCE:

Q. Where did that conversation take place? A. In the lobby of the Senate.

Q. How long was it after your conversation over the phone with Senator Gardner? A. Just preceding the conversation.

Q. How long before? A. A few minutes.

Q. The same day? A. The same day.

Q. And over the phone, I understood you to testify, Senator Gardner said that the amounts which this individual mentioned, would be paid? A. At least, I assumed it was Senator Gardner's voice.

Q. You are acquainted with him, are you not? A. Quite well.

Q. You succeeded him in the Senate? A. Yes, sir.

Q. You would not have any difficulty in identifying his voice over the phone? A. No.

By Assemblyman TOOMBS:

Q. Did you have any knowledge of any other interest Senator Gardner had in the racing bill, except the conversation he had

with you, and the conversation with the other man? A. I did not quite catch your question.

Q. Did you have other knowledge of Senator Gardner having any interest in the racing bill aside from his conversation with you? A. There was gossip around that he was behind it.

By Judge BRUCE:

Q. Did you see him in Albany? A. I never saw him in Albany.

Q. You were not down at the Hampton? A. No, sir.

ALFRED P. HOBLEY, called as a witness, being duly sworn.
testified as follows:

Examined by Judge BRUCE:

Q. Where do you reside? A. 142 South Ninth street, Brooklyn.

Q. What is your business? A. I was late Sheriff of Kings county.

Q. How long were you sheriff? A. Two years.

Q. During what years were those? A. During the years 1908 and 1909.

Q. Had you held public office prior to that time, Sheriff? A. Yes; I had been expert of records in the Kings County Register's office.

Q. And at the time you were sheriff were you connected with the Republican organization of Kings county? A. I was.

Q. In what capacity? A. As leader of the Fourth Assembly District of Kings county, and as chairman of the Republican City Committee for Greater New York.

Q. In what Senate district was the Fourth Assembly District? A. The Fourth Senate District.

Q. And who represented the Fourth Senate District in September, in the year 1908? A. Senator Foelker.

Q. You knew, did you not, Sheriff, that there was pending in the Legislature of 1908, certain measures known as the Race Track measures? A. I did.

Q. That those measures came to a vote in the Senate at the

regular session in April, on the 8th of April, I think, and that it was a tie vote, 25 to 25? A. Yes; there was a vacancy in the Senate at the Niagara district.

Q. It lacked one vote? A. Yes, sir.

Q. And that the Executive called an extraordinary session, and in the meanwhile the election having taken place in the Niagara district, and the vacancy having been filled, that the bill was again introduced at the extraordinary session, coming to a vote on the 11th of June, and it passed in the Senate with the necessary 26 votes — you know that? A. I do.

Q. Did you ever have any conversation with Senator Foelker with reference to his vote upon this measure? A. I did.

Q. Did you have a conversation with him during the regular session, that is, prior to the vote at the regular session? A. It was during the regular session that I had the conversation with him in reference to the bill.

Q. When did you have your first conversation with him? A. It was sometime during the session, I don't know just what time; occasionally we used to meet on a Saturday evening, not every Saturday evening, but now and then, and discuss those bills of a political nature that were pending in the Legislature.

Q. And where did you usually meet? A. We usually met at the Congress Club.

Q. That was the Republican club in your Assembly district? A. The Republican club of our Assembly district.

Q. How early in the session do you think you had your first conversation with him, shortly after the bills were introduced? A. Shortly after the bills were introduced.

Q. Let me ask you, what was your attitude with reference to these measures; were you favorable to them or unfavorable? A. May I answer that question in my own way?

Q. Yes. A. I was opposed to the bill in the shape in which it was drawn, and my advice to the Senator was —

Q. You were opposed to the bill in the form in which it was drawn? A. Yes, sir.

Q. Let me take that for an answer for the present? A. Yes, sir.

Q. In your first conversation with the Senator, kindly tell us

what was said by the Senator and what was said by you with reference to the matter? A. He said, "How do you feel about these bills, Sheriff?" I said, that they were a bad proposition for our party, and he said, "What makes you think that way?" Well, I says, "It is one of those measures that no matter how you might vote upon it, you are going to make a number of enemies, and if some compromise measure could be substituted for this measure, it would correct some of the existing evils that existed down there, and at the same time satisfy that element of people who were opposed to the gambling in the manner in which it was conducted there; everybody might possibly be satisfied with such a measure of that kind." I told him that I thought if they done away with the charging of admission to the field, made the field free, abolished all sorts and forms of gambling in the field, have it open to the general public, the same as it is conducted in England and France and Germany, giving to the poorer people the opportunity to see races without any expense whatever other than what it might cost them for transportation to the track, and making those men who were fond of horse racing, making them support the horse racing, without holding out an inducement to the poorer man who could ill afford to gamble, without holding out the inducement or the opportunity for him of gambling.

Q. What did he say? A. He said he did not think that a measure of that kind could be drawn or would be satisfactory, then he came subsequently and told me, no, that the Governor insisted upon this original bill.

Q. What did you say? A. I said, "How do you feel about it?" He said, "I feel as though I ought to vote for the bill." He said the mass of his correspondence from his constituents was in favor of this bill. I told him under the circumstances then the only thing he could do was to vote for the bill.

Q. What else was said then? A. Nothing further than that, other than what I have just stated. One thing I told him—I told him I thought that a substitute proposition of that kind would be of greater advantage to the people, and better results would result therefrom. I have never believed that you could govern a man's moral inclinations by statute law.

Q. Did you ever have any conversations with him with regard to this measure other than in the Congress Club? A. Yes; I visited him up at Staatsburg.

Q. Did you ever have any conversation with him any other place than the Congress Club and Staatsburg? A. No other place.

Q. Did you see him in Albany? A. No, sir.

Q. Were you in Albany during the session of 1908, the regular session or special session? A. I was not.

Q. Did Senator Foelker state to you at any of the conversations which you had with him at the Congress Club or in Brooklyn, that he had been approached with reference to his action upon the measure? A. He made some reference to that upon my visiting him at Staatsburg.

Q. I say, did he make any reference to that in the conversations which you had with him in Brooklyn? A. No, he did not.

Q. Did he say any one had approached him with reference to the measure? A. He did not.

Q. When did you visit him at Staatsburg? A. I don't know just when, but I visited him at his request.

Q. More than once? A. I don't recall, I don't think so, I think it was only once.

Q. Now, referring to the regular session, did any one else talk with you with reference to the vote of Senator Foelker, or his action upon these measures other than the Senator himself? A. No one other than some friends of mine whom I knew in Brooklyn.

Q. Who ever spoke to you with reference to the action of the Senator in Brooklyn, other than the Senator himself? A. Oh, a number of people.

Q. Did Senator Hasenflug ever speak to you? A. Never anything discussed on the subject with Senator Hasenflug, at all, or with any other Senator.

Q. That is, Senator or ex-Senator? A. Senator or ex-Senator.

Q. Did you ever have any conversation with Commissioner Swazey in regard to his vote? A. The only conversation that I had with Commissioner Swazey was when the Senator's term expired, and I asked Commissioner Swazey as a particular favor

to me, to help assist me in nominating Senator Foelker for Congress.

Q. I am now asking, did you have any conversation with Commissioner Swazey with reference to Senator Foelker's vote upon this measure, as to what attitude he was going to take?

A. Not other than some ordinary conversation.

Q. Well, did you have some ordinary conversation? A. Not of any consequence.

Q. Did Commissioner Swazey ever tell you that they were endeavoring to get the vote of Senator Foelker in favor of the bill, or to fail to vote for the measure? A. No, sir; he never made a statement of that kind to me.

Q. Did he ever state to you whether or not Senator Foelker had stated to him that he had been approached with reference to his vote upon the measure? A. No, he did not.

Q. Now, what were the circumstances of your going up to Staatsburg to see the Senator? A. The matter came up on a train going to the National Convention, at which I was a delegate.

Q. That was between the regular session and the special session? A. No, that was after the bill had been signed; the bill had been signed by the Governor the day before.

Q. Before you went to Staatsburg? A. No; I left the following day for Chicago.

Q. And was it after your return from Chicago? A. Yes; it was after my return.

Q. After your return from Chicago? A. It was after my return from Chicago.

Q. That you went to Staatsburg? A. That I went to Staatsburg.

Q. What was the occasion of your going there; how did you come to go up there? A. I got word in Chicago by telegraph that he wanted to see me.

Q. Yes. A. And I sent a letter back to him in response, stating that I was tired out at the time; he wanted me to stop off there on my way back, and I stated I was tired out and unable to do so, but I would be pleased to see him at any time subsequent to that.

Q. And did you go up subsequently? A. I went up subsequently.

Q. How long after your return? A. I don't know just how long it was.

Q. Some weeks or some days? A. I am wrong. Let me correct myself. I visited him at Staatsburg before the trip to Chicago.

Q. Yes, I thought so. A. Yes, sir. It was in the New York office I saw him after I came back from Chicago.

Q. Now, this visit you made to him in Staatsburg before the National Convention at Chicago, was that prior to the vote at the special session or afterwards? A. It was prior to the vote at the special session.

Q. And how did you come again at that time to see him? A. Because he had written me a letter asking me to come up.

Q. Did he state for what purpose? A. No, simply that he would like to see me.

Q. You remember Commissioner Swazey came to you one night at Brooklyn, in company with Mr. Leach, and told you that he had received a long distance telephone call over the phone from Senator Foelker's doctor, and he wanted you to come up on the first train in the morning; does that refresh your recollection? A. Yes, it does.

Q. Is that correct? A. That is correct.

Q. Was that the circumstances under which you visited him there? A. Yes; that was the second visit.

Q. That was the second visit? A. That was the second visit.

Q. Not the first? A. Not the first.

Q. You went and saw the Senator? A. I did.

Q. Where did you find him? A. I found him at the home of his father-in-law at Staatsburg, New York.

Q. This is the first visit you are now speaking of, is it? A. Yes, sir.

Q. Was he in bed? A. He was in bed; a very sick man.

Q. You had a conversation with him, did you? A. I did, a brief conversation.

Q. Alone? A. Alone, yes.

Q. Just give us the conversation, please? A. The conversation was that naturally he inquired about my health, and I inquired about his, and he wanted to know what the conditions

were, political conditions in general, and I told him that there was practically nothing new; he told me that the doctors had kept him from reading the newspapers, that he was not in possession, or knew nothing about what was going on, and I told him that the only thing discussed mostly was this Race Track Bill; he asked me what I thought of it; I told him I had not changed my mind, but I thought it was a subject that he had not ought to discuss while he was in that condition.

Q. What else was said? A. Nothing else.

Q. Did he say why he had sent for you? A. Simply to inquire as to what was going on.

Q. That he wanted you to come up the next morning on the first train for the purpose of telling him what was going on? A. No; that was the second one.

Q. Was that all that was said as you now recall in that conversation? A. Yes, that was all that was said at that conversation.

Q. Did he say at that time whether or not he had been approached with reference to his vote upon the measure? A. He did not.

Q. Did he say anything to you with reference to his political future in the event that he voted for the measure? A. He did not at that time, not at the time that he was sick; in regard to his political future, that discussion had occurred, as I stated before, when we discussed the matter in the first instance.

Q. Well, I don't think you mentioned that; when you discussed the matter in the first instance what was said by him and what was said by you with reference to his political future in the event he supported the measure? A. I simply said I thought the measure was a measure that would hurt him, that would cause him the loss of a number of votes no matter which way he voted: that I knew there were a number of good Republicans, good, honest, substantial business men who would like occasionally to go to the race-track, men who would not be considered gamblers in any shape, form or manner, men who would like to go there occasionally for an afternoon's sport, and I told him they would like that pleasure and they would not like to have that privilege taken away from them; but as to making any threat that he could not be renominated, there was never any such statement as that made by me at all.

Q. Did he say in that conversation whether or not he was going up to Albany to attend the special session and vote? A. He did. He said he was going to vote in favor of the bill.

Q. Did you ask him not to go? A. I did not.

Q. Did you state it might seriously impair his health, or life, if he did go? A. I said this to him, if it was going to endanger his life, I did not think he ought to go.

Q. What did he say about that? A. He said he thought he ought to go anyway, but he would rely upon what the doctor said.

Q. Did you state to him that you had understood that other Senators had been approached with reference to their votes upon the measure, and had been offered a financial consideration, either to vote against the measure, or not to support it? A. I did not. I at no time had any discussion with anybody with reference to any money in regard to this race-track bill.

Q. Senator Foelker when he was upon the stand stated: "Were you approached subsequent to that time with reference to your action on this measure? A. I was asked subsequent to that time by the then Sheriff Alfred T. Hobley, he asked me if I would not, if I did go to Albany, vote against the bill. I told him that under no circumstances would I vote against the bill." Is that correct? A. That is correct.

Q. "Q. Was there anything further said? A. He did say at the time that he had heard either that some one had received or was to receive something like \$200,000 or \$225,000 for his vote against the bill." A. I could not have made such a statement of that kind in my wildest dreams.

Q. "Q. Did he make any threats to you as to what would happen to you politically in the event that you gave your assent to the measure? A. He said he thought I would not be renominated in case I should vote for the bill. I told him that I couldn't help that." Is that correct? A. No, sir; that is not correct. I simply told him I was afraid his voting for the bill would imperil his chances of re-election, not for renomination; and let me say, in addition to that, when we subsequently met here in New York, he told me that he had got tired of being a Senator, and that he would prefer to go to Congress; at that time, the Congressman, our representative, had died, and there was an unexpired term to

fill, that is, one year, and there was the full term of two years, and he said that he was a poor man, and he said that if he could go to Congress and could get this \$7,500 a year for three years, that is what it meant, \$22,500, that he thought then that he would like to retire from politics, and he felt as though he could save at least \$15,000 or \$16,000 out of that sum of money, and that he could then practice law.

Q. "Q. He referred to your renomination for the Senate, did he not? A. He did; he said he thought that if I voted for the bill, I would not possibly be renominated." Is that correct? A. No, sir; I said possibly he might not be re-elected, not renominated.

Q. Why did you think he could not be re-elected if he supported these measures? A. I believe the passage of that bill cost the Republican party a good many votes last election day.

Q. Of course, that is interesting and more or less painful. Going back to the election in the fall of 1908, did his support of that measure cost him votes in the Congressional election of 1908? A. I imagine that it did.

Q. He was triumphantly elected to Congress, wasn't he? A. He was elected Congressman, but his plurality was but 3,000 and some odd hundred, whereas the head of the ticket received about 8,000 or 9,000.

Q. Then you feel that your statement to him that if he voted for the measure, it would jeopardize his election to the Senate was correct, do you? A. Yes, sir.

Q. That was justified you feel by the result in his canvass and election to Congress? A. Well, no, I don't want you to draw that conclusion. I felt this way about it, that the best way to prove and demonstrate the fact was, particularly as long as he requested it, and in order too, that it might prove and demonstrate to the public, that there was no question of graft as far as I was concerned. I approached the associate leaders in that Congressional district, and requested them as a personal favor to support the then Senator for the nomination to Congress so as to disprove some of the rumors in circulation at that time that there was some question of graft.

Q. To bring the question down to the point which I have in mind: Did you at any time in any conversation which you had

with the Senator, state to him that in the event he supported the measure, that he could not possibly be renominated for Senator?
A. I did not, at no time.

Judge BRUCE: The adjournment hour has arrived, and I would ask that we take a recess now.

Recess until 2 P. M.

AFTER RECESS.

2 P. M.

ALFRED T. HOBLEY, resumed the stand.

By Judge BRUCE:

Q. You had a conversation with Senator Foelker at Staatsburgh after you came back from Chicago, did you not, that is after the Chicago convention? A. No, I was mistaken about that. As I stated this morning I had that interview with him at his office.

Q. You had that interview with him at his office here in New York? A. At his office here in New York.

Q. Was it at his office or at the Quarantine Commissioner's office? A. It was at his office.

Q. How did you happen to have that conversation? Was that in response to a letter that you received from him? A. It was in response to a dispatch that he sent to me asking me to stop in and see him; and in reply to that I sent him a letter, and it was the result of that letter that he then sent for me to come and see him at his office.

Q. Do you recall when it was that you returned from the Chicago convention? A. I returned immediately upon the adjournment of the convention.

Q. I know, but do you remember the date of the convention? A. The convention I think was June 8th; I think so, thereabouts.

Q. Now then if you were to fix the date with reference to the time of the convention, at which time in June would you say it was that you had the conversation with Senator Foelker at his office? A. May I look at the paper in my pocket?

Q. Certainly. A. Sometime in the month of July.

Q. Sometime in the month of July? A. Yes.

Q. Of course that was after the bill had become a law, after it had received the signature of the executive? A. The Governor.

Q. Did you go to his office alone? A. Yes, sir.

Q. You found him at his office when you went there? A. I found him at his office when I went there.

Q. Was he alone? A. I think his associate was with him then, his partner or somebody.

Q. Do you recall his name? A. I do not; no.

Q. Did you talk with him alone or in the presence of his partner? A. I talked with him for a while in the presence of his partner, and then talked with him awhile alone.

Q. Kindly give me that conversation? A. The result of that conversation —

Q. Will you give us first the conversation itself, what was said? A. Why, he asked me if I was agreeable to stand by what I stated in the letter that I wrote him.

Q. And what was it you had stated in the letter to which he referred? A. I can read it if you would like to have me.

Q. I wish you would? A. This is the letter I sent to him while I was in Chicago:

“CHICAGO, June 19, 1908.

HON. OTTO G. FOELKER,

% MR. BODENSTEIN, Staatsburg, N. Y.:

MY DEAR SENATOR:

Your communication through Gov. Woodruff received. I would be pleased to comply with your wishes and leave the train at Staatsburg for the purpose of seeing you, but I am informed that the train will not make the stop. And I am somewhat tired out, after a week's session in Chicago. I believe, however, that I know what you want to see me about, and that is in reference to that story published in the Brooklyn Daily Eagle. That whole story was written out of whole cloth, and was the result of a little joking on the train coming here.

As a matter of fact, I absolutely know nothing of any money or other bribe being offered to you directly or indirectly, for your

vote either for or against the Race Track Bill or any other bill during my acquaintanceship with you, which dates back long before your entrance into public life. I have always found you to be honest, straightforward and truthful. If there is any additional information that you desire concerning the article referred to or on any other subject I will be pleased to talk the matter over the phone with you or pay you a visit at your home in Staatsburg next week some day.

With kind regards and best wishes for your good health, I am,

Yours sincerely,

A. T. HOBLEY."

Q. That was dated June 19th? A. That was dated June 19th, yes, sir.

Q. In response to that letter you called upon him at his office? A. I did.

Q. Give us, as nearly as you can remember, in substance what occurred at the office? A. The conversation was in regard to this letter and in regard to the talk on the train that this article referred to.

Q. What did you say and what did he say? A. He drew up an affidavit here which I signed for him, a copy of it.

Q. You have a copy of it in your hand? A. Yes.

Q. What did he say when you first came in, and what did you say? A. I said, "How do you do, Senator?"

Q. And after passing the time of day with him, and inquiries as to his health, and, I presume, as to the convention, what was said in regard to the subject matter of the letter? A. Nothing more than the letter itself. He asked me if I would be willing to substantiate what I had said in the letter in the form of an affidavit. I said I certainly would.

Q. What was the conversation on the train to which he referred? A. Well, the conversation that we had on the train was more or less of joking and reading the paper. It was the day after the Governor had signed the bill, and all of the papers had two or three pages, they were full of it, and about the money that had been used, and an account of his being brought there to the Senate chamber upon a stretcher, and there was more or

less talking and joking about the matter on the train as the result of those articles.

Q. What had you stated upon the train, to which you said he took exception? A. I do not know just what I had stated there.

Q. What did he say that you had stated? A. He didn't state.

Q. What did the article in the Brooklyn Eagle state that you said? A. It stated, I think, if my memory serves me right, that I had made some reference to his honesty in the premises.

Q. That you that made any specific reference to any act of his on the bill? A. No, no specific act that I could remember.

Q. Did or did not the article state that you had stated that he had received a consideration for his vote? A. I do not remember whether the article said that or not, but if it did state so, I was misquoted, because I didn't make any statement of that kind.

Q. What did you state in reference to it in a joking way, as you said, Sheriff? A. Well, it stated that it was very strange about all these stories about there being so much money up there, and I had not heard at no time about money being offered to anybody in reference to this measure. I had not been at Albany all during the entire session, and consequently knew nothing about it.

Q. He did not take exception to your having said that, did he? A. No, I do not know just what I stated specifically that he did take exception to.

Q. What did he say that he had heard or had read that you had stated in reference to his action, to which he took an exception, of which he asked a denial of you, and which denial he asked to be incorporated in an affidavit? A. He did not state.

Q. There must have been something more, was there not, because there would be nothing in what you have stated to which he possibly could take exception? A. I do not remember his making — that is, anything I said. He objected to the article as a whole. There was not any one special feature of it that he objected to.

Q. Was there anything in the article which in substance stated that he had received a consideration not to vote for the bill, or to vote against the bill, and notwithstanding having accepted that

he had voted for the bill? A. Not that I know of, and if such a thing was there stated that I had said that, it was false.

Q. He stated to you that he had heard or had been informed that you had made such a statement? A. Yes.

Q. That was what he took exception to? A. Yes.

Q. Did you make any such statement in terms or in substance? A. Not of my recollection.

Q. Did you hear anyone say anything in reference to his having accepted a consideration, or being approached in reference to a consideration for his action on the bill? A. I did not.

Q. You signed the affidavit, did you? A. I did.

Q. Why did he say he wished an affidavit? A. Well, he wanted an affidavit because of that article in the newspaper. He said that he would not have thought anything of it if it had not gone as far as the press, become public.

Q. Do you recall this paragraph in the affidavit (folio 8):

"Whatever I have said which might be construed as a reflection upon Senator Foelker has been said in that way and only in that way." (Referring to the joking way.) "I have not intended to say or to be seriously understood as saying that he had done anything in connection with the racing bills at all inconsistent with the stand which he took from the beginning."

Do you recall that paragraph in the affidavit? A. I do.

Q. To what did that refer, that you had said even in a joking way? A. That I cannot recall.

Q. Do you recall in the affidavit this paragraph:

"I personally was opposed to the racing bills. I did urge upon Senator Foelker that he vote to defeat them. I was very much disappointed that I was not able to persuade him to take my view of the matter. I have even gone so far as to say that he would possibly be defeated for re-election if he did not oppose the bills. But I repeat — I had never offered him a bribe of money or of any other thing of value, nor do I know of any other person having offered him such, nor do I know of any such having been offered him, nor do I know of any such having been received by him for his vote. I have never heard it said by anyone that he had in that connection either received a bribe or that a bribe had been offered to him."

Do you recall that paragraph in the affidavit? A. Yes, I do.

Q. Did Senator Foelker say that anyone had told him that you had stated that he had been offered a consideration for his vote or to refrain from voting? A. I don't remember him having said that.

Q. Did anybody state that you had directly or indirectly offered the Senator a consideration for his action upon the measure, or intimated to him that he might receive a consideration, in the event that he took the same view that you did with reference to the bill? A. Nobody had stated anything of that kind.

Q. Well, if the Senator did not say that to you, why do you state here "I have never offered him a bribe of money or of any other thing of value," et cetera, as I read from the affidavit? Do you recall? Why did you go out of the way to deny this in this affidavit? If it was a fact that no one had made such a suggestion to you, or you had made such a suggestion to the Senator? A. I told him that he could draw this affidavit as thorough as he liked. This affidavit is his own composition; the letter is my composition. The affidavit is entirely all his, and he had it all drafted for me when I first went over to the office, and a clerk or somebody there, associate, took my affidavit.

Q. Was it altered after you went in, or did you sign it in the form in which he had it drafted? A. In the form in which he had drafted it; there are no alterations made in it whatever.

Q. Did you at any time before that intimate to him the form in which it should be drafted? A. No, sir, none whatever.

Q. The language, and also the statements themselves, are entirely his? A. Entirely his.

Q. Do you recall where you were when Commissioner Swayze in company with Mr. Leach came to see you and stated to you that he had received a notice from Senator Foelker and the doctor asking you to come up on the train the next morning. Do you recall where you were at the time that the Commissioner found you? A. I do not.

Q. Do you recall who was present besides yourself? A. There was nobody present besides myself.

Q. Mr. Swayze and Mr. Leach were there? A. Yes.

Q. Do you recall where you were at the time, Sheriff, when they

brought you this message? A. I believe I do; at my mother-in-law's house.

Q. Was anybody present except the lady? A. No.

Q. You went up the next morning, did you? A. I went up, yes, the following morning.

Q. And you have stated the conversation which occurred there? A. I think so.

Q. Did anyone state to you, Sheriff, at any time, that they had paid a consideration or a part of a consideration to Senator Foelker for his vote, with an understanding that the balance was to be paid after the vote was taken, and that he subsequently demanded the entire consideration before the vote was taken? A. No, sir.

Q. Do you know Commissioner Schroeder? A. Yes.

Q. You have known him for a number of years? A. I had known him for a number of years.

Q. Did you ever have any conversation whatever with Commissioner Schroeder in regard to Senator Foelker's action upon these measures? A. Only once.

Q. Where did that take place? A. At my office.

Q. Do you recall when it was, Sheriff, before or after the special session? A. That is just what I was trying to recall to mind.

Q. Just take a moment? A. It was before.

Q. Before the special session? A. Before the special session, yes, sir.

Q. Just give us that conversation, will you? A. He asked me what the Senator's attitude was upon that bill, that is the racing bill, and I told him that he was in favor of it; so he said, "How is that?" "Well," I said, "I have had a talk with him about it and he feels as though he had ought to vote for the bill in accordance with the sentiment of the people in his district as far as he has been able to find out." I said, "He has informed me that ninety per cent of the letters that he had received concerning the bill had been in favor of the bill," so he asked me what influence I had over him. I said, "Very little in a matter of this kind," and I told the Commissioner that it was a matter, too, of such serious moment that the Senator should act according to his own

judgment. So he said, "Why don't you try and see if you cannot influence him. This might hurt us." I said, "There is no use of my trying." I said, "Why don't you see him?" I said, "He states that his attitude on the bill is due entirely to the sentiment, according to the way he has found it, and what influence has been brought to bear upon him," and I said, "Maybe if you and other men see him who are to some extent responsible for his nomination, he might change his action regarding the bill."

Q. Is that all? A. That was all.

Q. Did Schroeder say anything to you in reference to an attempt on the part of those persons opposed to the bill to induce the Senator either to vote against the bill or refrain from voting? A. He did not.

Q. Did he say that anyone had made any inquiry of him as regards the attitude of Senator Foelker on the bill? A. Yes, he said that some people had inquired as to the Senator's attitude on the bill, and I told him that he could tell them that the Senator was for the bill.

Q. Who had made those inquiries, did he say? A. He did not state.

Q. In the testimony which Mr. Schroeder gave before the Committee he stated as follows; he has stated in substance that he was called on the phone by Ex-Senator Hasenflug, who inquired as to the attitude of Senator Foelker upon the bill, and requested Commissioner Schroeder to ascertain if possible what Senator Foelker's action was going to be, that he sent for the Senator and had an interview with him in regard to it, and after that he testified as follows, that Commissioner Schroeder said to Senator Foelker as follows:

"And he said, 'Well, I will tell you what I will do, I will talk to Al Hobley about it.' So then the following day I met Mr. Hobley, and I told Mr. Hobley 'What do you think; Hasenflug called me up; they want Foelker very badly.' He says (referring to you). 'I will attend to him, you leave him to me.' I then called up Hasenflug and told him 'Any further communication you may have with Hobley' for the reason Hobley lives in the very Senatorial district, in his Assembly district, where he actually named Foelker for Senator, and I thought that he could handle him a

great deal better, and I says, 'You had better see Hobley about it.'” A. In the first instance he never mentioned the name of Senator Hasenflug or anybody else to me when he made this inquiry about it, and instead of my saying to him, “Leave him to me,” I said to him as I have previously stated, what his attitude was upon the bill and the reason he was for the bill, and the only way his attitude might be changed at all was bringing influence to bear upon him, and I advised the Commissioner to see him personally himself.

Q. You advised Commissioner Schroeder? A. To see him.

Q. Did not Schroeder when he came to see you say he had already seen Foelker? A. No, he asked me what the Senator's attitude was on the bill.

Q. Did you have any conversation with him about it after that? A. No.

Q. Did you have any conversation with him except this one you have related? A. No, except the talk we had on the train after the bill had been passed and signed.

Q. What did he say about his action then? A. Well, it was all over with then; he had practically nothing to say. There was no reference made about his visit to me at all.

Q. Did Commissioner Schroeder say anything to you after the bill had been signed, as you related, upon the train, that a consideration had been paid Senator Foelker, that he demanded the entire consideration, and that it was decided after a conference to call his bluff and they called his bluff, and he retained his consideration and went in and voted against the bill? Did he say that, or that in substance? A. No.

Q. Did anyone, Sheriff, ever say that to you or that in substance? A. No, he did not.

Q. Did anyone ever intimate to you that any such action had been taken by Senator Foelker? A. No one ever said or intimated anything to me of that kind. The only thing that I knew with reference to a money consideration was what I read in the newspapers. I had not been at Albany once during the entire session, for the first time in a great many years, that I had not visited Albany, and I had not been there once during the entire session, and that shows what little interest I really had in the bill.

Q. Do you know Ex-Senator Gardner? A. I do.

Q. Did you ever talk with Ex-Senator Gardner about the bill?
A. I did not; I never saw him once while the bill was pending.

Q. Do you know a man associated with Senator Gardner by the name of Eilperin, Jacob Eilperin? A. I do.

Q. Did you ever talk with him in regard to it? A. I did not, at no time whatsoever.

Q. You knew Senator McCarren, of course? A. I did.

Q. Did you ever talk with Senator McCarren about it? A. I did not.

Q. Either before or after the passage of the bill? A. Either before or after the passage of the bill.

Q. I think I asked you whether or not you had ever any conversation with Senator Hasenflug about it? A. Well, you asked me — I don't know whether you did or not, but if you did I want to say no. I never saw Senator Hasenflug from the time the bill was introduced until after its passage.

Q. Did you ever have any communication with him, either in writing or over the telephone or by telegram? A. No way at all, no shape, form or manner did I have any communication.

Q. Now, Sheriff, have you told us frankly all that you now have in mind or which occurred with reference to your knowledge of any attempt to influence the action of Senator Foelker or any other Senator on this bill? A. I have absolutely told you the truth, and, as I stated here this morning, I wanted to ask the privilege of the Committee before I was excused, to say just a word or two, just in reference to my statement here this morning in regard to the racing bill.

I did not want to be understood as being in favor of these conditions that existed there. I simply thought that a bill could be introduced which would do away with an admission to the field, abolish all book-making there, charge any prices they liked for entrance into the grand stand, and confine it to that class of men who could well afford it and who liked the sport.

Speaking of the vote, this morning, I was a candidate in that Congressional district myself at the recent election. There was a circular that was mailed to every Republican voter in that Congressional district on the Saturday morning before election. I

was defeated as a candidate for Congress in that district by 924, with a majority in the county of 25,000 against us. Foelker carried that district two years ago for Congressman by a little over 3,000, and there was a difference of 25,000 one way as against 25,000 the other way, and the only thing I regret — I appreciate very much the kindness and courtesy that the Committee has extended me here — and the only thing I regret is that I could not have had an opportunity of being heard previous to election day.

Q. Did you make a request to be heard? A. I did not.

Q. We had sessions for that purpose? A. They afforded that, I believe.

Q. I am frank to say on behalf of the Committee, that if you had made such a request, not only would the Committee have been very glad to give you an opportunity of being heard, but you being a candidate for office, they would have held, if necessary, a special meeting in order that you could be heard? A. I thank you.

Q. You attended to-day under subpoena? A. Yes, I was pleased to come under any circumstances.

Q. I do not wish you to misconstrue the action of the Committee; the Committee were perfectly willing that every person should be heard, and as far as candidates for office were concerned the Committee was willing to hold special sessions. A. I wanted to say frankly, that I hold myself to blame. When I say that I did wish to have had an opportunity, I do not wish to be understood as holding the Committee responsible for not having that opportunity. It was my own neglect.

By Assemblyman TOOMBS:

Q. Was Commissioner Schroeder on the train coming back from Chicago at the time of the talk you mentioned in your testimony? A. No, I don't think he came back with me. We came back on different trains. He stayed over, and I came back as quickly as I could on account of the urgent business in the office. I had received a dispatch while in Chicago from the office, and I returned as quickly as possible on account of such act, and I had received a dispatch from the Governor in the meantime, calling upon the sheriff to see that the law was duly enforced.

Q. When this Committee went to Sing Sing in October, Commissioner Schroeder said there was some talk on that train? A. That was on the way to Chicago, not coming back.

Q. He said there was talk on that train regarding Senator Foelker's attitude on the racing bill, and he said that you had made some statements which reflected, as I remember, on Senator Foelker, and some people on the train told you to keep quiet, because there was a newspaper reporter on the train, and they were afraid he might hear the conversation? A. Something of that kind was said.

Q. Did Commissioner Schroeder ask you to keep quiet? A. He did not.

Q. Did anybody else? A. Somebody else said, "Sheriff, ain't you talking a little bit too much?" "Well," I said, "of course all the brunt of the passage of this act was practically placed up to me, for this reason, that he being practically the deciding, casting the deciding vote, everybody that was opposed to the racing bills pointed out me, and I was getting it from both directions," and I naturally felt a little bit sore under the circumstances, but I cooled off very quickly.

Q. Were there any reporters on that train? A. There must have been, yes.

Q. You don't know who wrote that story? A. No, I don't know who wrote that story.

By Judge BRUCE:

Q. Commissioner Schroeder testified that he said to you, or said rather to Ex-Senator Hasenflug, that you were responsible for Foelker's nomination, that is, your power in the district was so that you could control the Senatorial nomination? A. No, I would not say I could control it; I simply say that as leader of the district I tried to nominate that kind of candidates that would appeal to the sentiment of the intelligent voter. That is all.

By Assemblyman TOOMBS:

Q. Who was the doctor at Senator Foelker's house at Staatsburg? A. Dr. Murphy.

Q. Of Brooklyn? A. He originally came from an old Brooklyn family.

Q. Was he a relative of Foelker's? A. No, no relative of Foelker's.

CONRAD HASENFLUG, called as a witness, and being duly sworn, testified as follows:

Examination by Judge Bruce:

Q. Where do you reside, Senator? A. Jamaica avenue, opposite Brew.

Q. What is your business? A. Park proprietor.

Q. Have you ever held public office, Senator? A. Yes, sir, several of them.

Q. You were a member of the State Senate, were you, for several years? A. Yes, sir.

Q. During what years, please? A. Four to eight.

Q. 1904 to 1908? A. Yes, sir.

Q. Have you been a member of the Senate prior to that time? A. No, sir.

Q. Had you been in the Assembly? A. Yes, sir.

Q. For what years? A. 1900 and 1901.

Q. What district did you represent in the Senate? A. The Ninth Senatorial.

Q. What district did you represent when you were in the Assembly? A. Nineteenth.

Q. You were a member of the Senate during the session of 1908? A. Yes, sir.

Q. You recall, do you not, the bills that were pending at the regular session of the Legislature, known as the anti-racing bills? A. Yes, sir.

Q. You recall the tie vote in the Senate early in April, in the regular session? A. Yes, sir.

Q. And a bill being introduced in the special session called by the Executive? A. Yes, sir.

Q. Which passed simply with the 26 votes necessary to pass it in the Senate? A. Yes, sir.

Q. How did you vote upon the measures? A. I voted against the measures.

Q. You were acquainted with Senator McCarren, of course? A. I was, yes, sir.

Q. The leader of Kings county? A. Yes, sir, my leader.

Q. And you belong to the Democratic organization? A. I was a leader, the same as McCarren was.

Q. Now, in the testimony given before the Committee by Mr. Schroeder, who was formerly quarantine commissioner—you knew him? A. Personally.

Q. He testified before the Committee at Ossining, on October 21st, 1910, and his testimony, part of it, appears at page 1473 of the record, as follows:

“On a Sunday, I don’t know the date, this was on a Sunday, I just got through my dinner at 169 Pulaski street where I lived, the telephone rang up, I went to the ’phone; the ’phone was on the second floor, and Mr. Hasenflug, Senator Hasenflug, was on the ’phone; he asked if it was me, and he says to me, he says, ‘Fred,’—I knew Mr. Hasenflug for some time; and he says, ‘Fred, what is the matter’—using the very exact language—‘with that damn Senator of yours?’ I says, ‘I don’t know.’ He says, ‘Some of them said that he is going to vote with our side of the house,’ which was against the bill, he was against the bill, and others said he was going to vote for the bill. He says, ‘I wish you would find out and let me know how he stands, if we can get him, so that we can get him, we have got to have him, we need him;’ something to that effect, and I says, ‘All right, Connie, I will see what I can do, I will try to find out.’ The following day, I think it was Monday, I went to the office in the neighborhood of half-past ten or eleven o’clock, something like that;”—referring to his office in William street, and that he there had a conversation with Senator Foelker, and Senator Foelker said he would talk the matter over with the then Sheriff Hobley—you know Sheriff Hobley who was just upon the stand? A. Yes, sir.

Q. And that he stated this conversation which he says he had with you to Ex-Sheriff Hobley, and that Sheriff Hobley told him to leave the matter to him, that is to Hobley. He said that in this conversation which he had with Mr. Hobley, in which Mr.

Hobley said, "I have been called up, for the reason that Hobley lives in the very Senatorial district, in his Assembly district, where he actually named Senator Foelker "for Senator," and I thought that he could handle him a great deal better, etc. Now, Senator, I want to know whether or not that conversation, or that conversation in substance occurred? A. No, sir, I never called up Mr. Schroeder nor did I authorize anybody to call him up, and if I did, Mr. Schroeder could identify my voice, because we knew each other well enough to recognize one another over the wire. I never spoke to Mr. Schroeder about the measure or any other.

Q. Did you have any conversation with Commissioner Schroeder at any time with reference to these anti-race track bills? A. Not that I remember.

Q. If you had had such a conversation you would be apt to remember it? A. I think I would.

Q. Did you see him frequently and talk with him about political matters and matters pending in the Legislature? A. No, I saw him very seldom, maybe once a year, as well as I knew him.

Q. Did you ever have any conversation or communication directly or indirectly with Senator Foelker in regard to his action upon the measure? A. No, sir, not any measures. We spoke together every week, played together, played cards. I never spoke about any measures to him.

Q. You were a member of the Senate at the same time he was when these measures were pending, were you not, Senator? A. Yes, sir.

Q. Did you and he ever discuss these measures between yourselves? A. No, sir.

Q. Did you ever ask him what his action was going to be upon the bill? A. No, sir.

Q. Did he ever state to you what his action was going to be upon the bill? A. No, sir.

Q. Did he ever say anything to you about having been approached by anyone who was opposed to the bill with reference to his action upon the bill? A. No, sir.

Q. Did anyone ever request or ask you to see Senator Foelker with regard to his action upon the bill? A. No, sir.

Q. Did you know, prior to the time of his vote being given upon the bill, what his action would be? A. No, sir.

Q. Now, Senator, you were opposed to the race track measures? A. Yes, sir.

Q. And Senator McCarren was opposed to them? A. Yes, sir.

Q. Now, you were interested in the defeat of those measures, were you not? A. In what way?

Q. I mean interested, I mean believed — I assume that you thought it was for the best interests of your district, and for the people at large, that they should not pass — is that correct? A. I consulted a whole lot of people in my district, of the district which I was leader of, and a majority of them was opposed to it, and on that grounds I voted against it, and I voted against it also because Senator McCarren was the county leader and he was opposed to it, and I voted on them grounds.

Q. Did Senator McCarren ever request you to vote against the bill? A. No, sir.

Q. Did he ever ask you what your attitude was on the bill? A. No, sir.

Q. I presume you assumed that he knew that? A. Yes, sir, without asking me.

Q. Did anyone approach you at any time directly or indirectly with reference to your action upon this measure, intimating that it would be for your financial interests to vote against the measure? A. They did not, sir.

Q. Do you know of any Senator having been approached? A. I do not, sir.

Q. With reference to his action upon the measure, in relation to a financial consideration? A. I do not.

Q. Did any Senator ever state to you that he had been so approached? A. No, sir.

Q. Or that a consideration had been offered him for his action upon the measure? A. No, sir.

Q. Well, you were interested, as you say, in the defeat of the measure — did you talk it over with your colleagues in the Senate? A. Not that I know of; maybe we did in an off-handed way, I don't know; but I didn't approach anybody.

Q. Do you remember, Senator, whether any of them stated to you at any time what efforts had been made to secure their vote against the measure, or that they refrain from voting on the measure even though they didn't vote against it? A. No, sir.

Q. Did you have any conversations with members of the Metropolitan Turf Association or any of the jockey clubs with reference to your action on the measure? A. No, sir.

Q. Then have you told us fully and frankly, Senator, all you know in regard to any efforts having been made to improperly influence any Senator in regard to his vote upon the measure? A. I have, sir.

Q. Did you ever visit Commissioner Schroeder in his office, do you recall? A. No, sir.

Q. In William street? A. No, sir; I did years ago on other political matters.

Q. I mean during the year 1908? A. No, sir, I never saw his office.

Q. Let me ask you generally, Senator, were you ever present at any conference that took place between Commissioner Schroeder and any other person or persons with reference to the action of Senator Foelker upon this bill? A. No, sir.

Q. Did you ever state to him or any other person that the opposition to the bill needed his vote and must have it? A. No, sir.

Q. Did you ever make any statement that the consideration was not to stand in the way, that his votes should be secured? A. No, sir.

Judge BRUCE: Is there any question that any member of the Committee wants to ask Senator Hasenflug?

Judge BRUCE: (To witness.) That is all, Senator.

ALFRED J. GILCHRIST, called as a witness, being duly sworn, testified:

Examination by Judge BRUCE:

Q. Where do you reside, Senator? A. Brooklyn.

Q. What is your business? A. Lawyer.

Q. Where are your offices? A. 26 Court street.

Q. You have held public office, have you? A. I was Senator of the Tenth Senatorial District during the session of 1907-1908.

Q. Is that the only time you have been a member of either house of the Legislature? A. The only time.

Q. You were a member of the Senate during the session of 1908 when the anti-race track bills were pending, were you not? A. Yes, sir.

Q. Who were your Republican colleagues from Brooklyn? A. Senators Travis and Foelker.

Q. Do you know Mr. Tyrrell, the reporter of the Brooklyn Eagle, at Albany at that time? A. I do.

Q. Mr. Tyrrell, in the evidence which he gave before the Committee on the 19th of October, which appears in part at page 1333 of the record, stated that in a conversation which he had with ex-Senator Gardner — do you know Senator Gardner? A. I knew Senator Gardner.

Q. In Albany during the pendency of these measures, that the Senator making a reference which I will not repeat, stated that the two Senators from Brooklyn expected to get for their votes two and a half times as much as was being paid, or twice as much as was being paid to other Senators. I want to ask you whether or not you ever had any conversation with Senator Gardner with reference to your action upon that measure? A. I never did.

Q. Did you see the Senator in Albany? A. At that time, no.

Q. Did you see him at Albany during that session? A. I think not. To the best of my recollection the only time I saw Senator Gardner in Albany was on one occasion during the first session when he came into the Senate chamber and talked about Senator Travis, who succeeded him, and had to sit next to Senator McCarren.

Q. Do you mean that was during the session of 1907? A. 1907, right after we were elected.

Q. Did you see him there during the session of 1908? A. I did not.

Q. Did you see him at any place other than Albany during that session? A. I did not.

Q. Did you have any communications with him, directly or indirectly, by telephone, telegraph or in writing with reference to your action upon the measure? A. No, sir.

Q. Did you see Mr. Eilperin in Albany? A. I did not.

Q. Did you see Mr. Samuel Hillock — I don't know if I have his name correct or not? A. I don't know him.

Q. You don't know him? A. I may have seen some man by the name of Hillock without knowing whom you mean.

Q. How were you recorded upon the measure? A. I was recorded against the measure and voted against the measure.

Q. Both at the regular session and the special session? A. At both sessions.

Q. Now, Senator, did anyone have any communication with you, either at Albany or elsewhere, with reference to your action upon the measure in which they endeavored to influence your action by any consideration? A. No, sir.

Q. Did anyone approach you with reference to your action upon the measure, intimating to you that a consideration was being paid to anyone, or passed by anyone for their action upon the measure? A. At no time, sir.

Q. Did any Senator ever state to you that he had been so approached? A. No, sir.

Q. I presume you discussed the matter freely and frequently with your colleagues in the Senate? A. I discussed it principally in Codes, of which I was a member—I was a member of the Codes Committee to which this bill went.

Q. In any of these conversations was it intimated by any of the Senators that they or any other Senator had been approached in the manner in which I have suggested, with relation to their action upon the measure? A. No, sir, and I doubt whether it was so, because there were many that would have been glad to have made a noise about it if there was anything of that character.

Q. Well, did you receive or were you offered, or was there suggested to you any consideration for your vote upon the measure? A. None whatever.

Q. Is there anything you wish to state, Senator, to the Commission with relation to the measure? A. I suppose I could go into a long story and tell you what I thought of the bill, which of course is not the purpose of this investigation. I considered the bill an injudicious and ineffective bill, ineffective as not apt to bring about the desired results, injudicious and unfair to vested interests which the Republican party had for years encouraged in their legislation, and which I feel, when reform is to be brought about, should be brought about gradually. I have always felt so,

I still feel so. I believe there was some criticism of race track interests, and I knew from time to time as a citizen and as a man around town that that had been curbed, and I assumed that this particular feature, the betting at the race track, could have been handled more judiciously by more judicious legislation.

Q. And those were the considerations and the only considerations which influenced your action upon the measure? A. Absolutely so.

By Assemblyman TOOMBS:

Q. When this bill was introduced in the Senate at the first regular session, it was drawn to take effect immediately, was it not? A. Yes.

Q. And they were subsequently amended in the Senate Codes Committee? A. Yes, sir.

Q. To take effect September 15th? A. Yes, sir. I moved the amendment.

Q. Were there any efforts made there to have any one vote for such an amendment? A. No.

Q. How was the amendment adopted? A. The amendment was offered by me after a discussion in the Codes Committee, just a general discussion such as takes place in a committee pro and con, what we thought of it, the bad features of it and the good features of it; and my recollection of that amendment was that Senator McCarren made the suggestion that if the measure was going to be considered it was a criminal enactment, and enactment as an amendment to the Penal Code, and like all amendments to the Penal Code should take effect on the first of September, and that had been the policy of the Legislature, and that appealed to me as being reasonable, and in any event that the matter was not of such moment that it had to take effect immediately, as it had been encouraged for some fourteen years under the so-called Percy-Gray Law, and I moved the amendment. There was a question in the committee, as I recall it, whether the amendment was carried, it not having been supported by a majority of the committee, but by a majority of those present; and then that question was taken up in the committee, and although there was no appeal from the decision of the chairman, Senator Hill, it was informally discussed

and a vote informally taken, and a majority of the committee then voting in favor of what otherwise would have been an appeal from the decision of the chair, it was conceded that the bill should go out in that amended form.

EUGENE M. TRAVIS, called and sworn at the morning session of the Committee, recalled.

Examined by Judge BRUCE:

Q. Senator, is there a correction you wish to make with reference to your testimony? A. Simply this. When I went out of the room I wasn't quite sure in my mind as to the date I said. I wasn't quite sure whether that offer over the 'phone, or corroboration to which I referred, was the last day of the special session or the last day of the regular session, at which this bill was under consideration.

Q. You mean the last day in the regular session? A. I mean the day upon which the vote was taken; in the afternoon or that night. You said you wanted to ask me a question.

Q. The vote was taken, as you will see by reference to the Senate Journal, 131st Session, 1909, the vote was taken in the regular session on the 8th of April. A. My impression is it was at the special session; but I may be wrong.

Q. And your impression is that it was on the day before the 8th, that is, the 7th? A. No, if it was in the regular session, it was in the afternoon. The vote, as I recall it, was taken late at night in the regular session.

Q. Then if that was the regular session, it was on the very day the vote was taken? A. Yes.

Q. And prior to the taking of the vote? A. Yes.

Q. Did you ever have any conversation with Senator McCarren with reference to Senator Foelker's action upon the measure at the special session? A. Senator McCarren sat next to me, and I asked him if he thought Foelker was coming to Albany. He said he didn't think he would. I asked him if he came to Albany if he thought he would vote — I mean I will qualify that. I asked him if he came to Albany if he thought he would come to the chamber. He said no, he didn't believe he would. Then on the

morning we took the vote in the special session, I asked him if he still thought he would absent himself from the Senate chamber. He said he didn't think he would be there. Then I asked him if he does come to the session, what do you think he will do. He said, "I suppose he will vote for the bill."

Judge BRUCE: That is all. Does any member of the Committee wish to ask the Senator a question? That is all.

Chairman MERRITT: The Committee stands adjourned until to-morrow morning.

Adjourned to Saturday, November 19th, 1910, at 10 o'clock A. M.

EIGHTEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, *November* 19th, 1910 — 11 A. M.

Present—HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. ALEXANDER BROUGH, *Vice-Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ISIDOR J. KRESEL, Esq., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

CHARLES H. FULLER, called as a witness, being duly sworn, testified as follows:

Examined By Judge BRUCE:

Q. Where do you reside, Senator? A. No. 2 Tennis Court, Brooklyn.

Q. What is your business? A. Lawyer.

Q. Where is your office? A. 309 Broadway, Manhattan Borough, New York.

Q. Have you ever held public office? A. I have.

Q. What office? A. I was a member of the Assembly from the Eighteenth Assembly district during the year 1905, Kings

county, and I was a member of the State Senate from the Eighth Senatorial district during the year 1907 and 1908.

Q. Do you recall that there was pending at the regular session of 1908 in the Legislature certain bills known as the Anti-Race Track Bills? A. I do.

Q. Do you recall that those bills came to a vote in the Senate at the regular session on the 8th of April, 1908, and failed of passage, lacking one vote that would be necessary to give them the majority? A. I recollect all contained in your question except the exact date, Judge, and I do not recall that.

Q. Assuming that I am correct in April 8th, the rest of the facts stated in my question are as you recollect them? A. That is my recollection, yes, sir.

Q. Do you recall that there was a vacancy existing in one of the Senatorial districts, known as the Niagara district, at that time? A. I recall that there was a vacancy existing in one of the Senatorial districts, caused by the death of one of the Senators.

Q. And that the Executive convened the Legislature in extraordinary session? A. I received notice of an extra session.

Q. And you attended the session, did you? A. I did.

Q. Do you recall that this bill which had failed of passage at the regular session was passed at the extraordinary session? A. You mean, what is commonly known as the Race Track Gambling Bills?

Q. Yes. A. I recollect their being brought up at the extra session and passed; yes, sir.

Q. Were you ever approached by anyone, either at the regular session or at the special session or during the intervening time, with reference to your action upon these measures, in connection with any intimation that a consideration would be paid to influence your action? A. No, sir.

Q. Did anyone discuss with you the facts that there was a possibility of Senators receiving a consideration, in the event that they either voted against the bills or failed to vote for them? A. No, sir.

Q. Senator Travis, with whom you are acquainted, no doubt — A. I am.

Q. Testified yesterday that at a luncheon in which you were

present, and also Senator Carpenter, that you had stated to him that such intimation had been made to you. Was that correct?

A. Judge, may I ask that the testimony of Senator Travis on that point be read to me?

Q. Yes. A. I have read several accounts of it in the newspapers, and they all seem to vary. I would like to know exactly what the Senator said.

Judge BRUCE (reading): "Q. Now, Senator, do you know of any other Senator having been approached with reference to his vote on that measure? A. Why, gossip said that everyone——

"Q. I don't care for gossip; did any other Senator or member of the Assembly tell you he had been approached? A. Yes.

"Q. Who? A. I would rather not say.

"Q. Well, my purpose of inquiring, I will tell you frankly, is to call the Senator whom you may mention, so that I can inquire of him who approached him, and the circumstances under which he was approached? A. I took lunch with Senator Fuller and Senator Carpenter one day, and they said they had been approached; that there had been some intimation that there might be something doing. And one morning I took breakfast with Senator Yates, and he said he had been phoned by a party, who had asked him to come down to see him."

Q. That is the evidence to which I refer. A. I cannot recall the occasion that Senator Travis refers to — that is, a luncheon in which Senator Carpenter and he and I were present. I read substantially that report in the newspapers last evening, and I have been searching my memory, and trying to recall the particular conversation among the three of us. I cannot recall it at all. One thing I am certain of, and that is, that I did not say to Senator Travis that I had been approached with any offer of a pecuniary consideration, because that is not the fact, and I can hardly believe that I could have stated to Senator Travis that way, since it was not the fact.

Q. Well, were you ever approached with any intimation that there was something doing? A. I don't exactly understand your question, Judge.

Q. Were you ever approached with an intimation that a very juicy melon was about to be cut, or a proposition —— A. No, I don't recall any references to any melon.

Q. Well, do you recall any intimation that money was being paid or passed or considerations offered to influence Senators upon their action? A. Nothing, except what I read in the newspapers, which were full of it at the time.

Q. Were you ever approached in any manner with reference to it? A. What is that last question?

Q. Were you ever approached in any manner with reference to your vote upon that question? A. Why, that question is very broad, and I will try and make my answer as broad as possible, to meet it.

Q. I was endeavoring to make the question as broad and comprehensive as I could? A. I received a great many letters from people in my district, both urging me to vote for the bill, and, probably nearly as many letters from people urging me to vote against the bill. My district,—if you will permit me to explain the situation a little bit at length —

Q. Certainly. A. My district was a very peculiar one. It embraced the Sixteenth, Seventeenth and Eighteenth Assembly districts. The Eighteenth and Seventeenth Assembly districts were made up very largely of what are generally considered the better class of residents, and I think there was no doubt—at least, that is the way I felt at the time—that the prevailing sentiment in those two districts was very strongly in favor of the passage of these two bills. On the other hand, a considerable part of the Sixteenth Assembly district was of a different character. And, as a matter of fact, two, I believe—I don't know about the third—but at any rate, two of the principal race tracks of the country were located in this Sixteenth Assembly district,—that is, the Sheepshead Bay track, and the Brighton Beach track—the track at Brighton Beach. There was a very strong feeling in that end of my Senatorial district against these bills, which was not confined, as I understood it, to people who were directly interested in the subject of racing there as owners of horses, or to the book-makers, or the people interested in the jockey clubs. But, there were a great many people living in the vicinity of these race tracks, who were making a living by the crowds being brought to the tracks, and it was claimed that their business interests would suffer very materially if these bills became laws. I had that put

to me pretty strongly in letters and also in conversations which I had with various people, and I realized myself the financial loss that was going to accrue to these people, and I felt very sorry for them. So that, when you asked me whether I was ever approached in regard to these bills,—there is no doubt that I was approached, both in writing, and as every Senator is approached at his desk, and in passing through the halls, by different men, who will come and argue for or against bills. In that sense I was approached. That is the reason I wanted to make my answer clear.

Q. Did you have anyone approach you in the lobbies or around the Senate who was not a constituent of yours, in regard to these bills? A. It is impossible to answer that question, Judge, because I have some 30,000 constituents in the district, and I could not tell whether a man approaching me was a constituent or not.

Q. Did anyone approach you or attempt to influence you in an improper manner in regard to your action on these bills? A. No, I would not consider that I was ever attempted to be influenced in an improper manner.

Q. No one ever made any suggestion of the possibility of a consideration of any character? A. Literally, I can answer that question, no. But, if you wish to have the answer in a broader form, I would qualify it possibly in this way; that personal and political friends, in discussing the bills with me and the situation in my district, may very likely have spoken to me of the effect of my vote on that bill, either for or against, in connection with my political future.

Q. Did anyone ever threaten you in regard to your political future, either as to a renomination for Senator or otherwise, in the event that you supported the measure? A. No.

Q. Did anyone ever say anything to you which you construed to be a threat? A. No.

Q. With reference to your political future? A. No.

Q. Then you have told us, Senator, all that you know, this morning, have you, so far as any attempt was made directly or indirectly to approach you in reference to the matter? A. Well, I suppose, Judge, you use that word approach in an invidious sense?

Q. I do. A. Using it in that sense, I have told you.

Q. Did any other Senator ever state to you that he had been approached, now, I am using that word approached in an invidious sense, with relation to his action upon the measure? A. I have already told you, that I cannot recall the incident which Senator Travis spoke of yesterday, where there was a conversation in regard to being approached, and in which I think he said, that he said that he was approached. Now, I would not want to contradict the Senator. He may have said that at that luncheon. My memory does not recall it.

Q. Did any other Senator than Senator Travis, if he should have so intimated to you, intimate that he had been improperly approached in regard to his action on the measure? A. I cannot recall any conversation with any other Senator in that direction, stating that he had been approached.

FRANCIS M. CARPENTER, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Senator? A. Mt. Kisco, Westchester county.

Q. And your business is what? A. Well, my active business is, president of the Westchester and Bronx Title Company.

Q. I won't ask you to go over all the offices you have held, Senator, but tell me the times that you were a member of the Legislature? A. In the years 1903, 1904, 1905, 1906, 1907 and 1908.

Q. A member of the Senate? A. A member of the Senate.

Q. Representing what district? A. The Twenty-third district, before the apportionment, and Twenty-fourth thereafter.

Q. Do you recall the pendency in the session of 1908 of the anti-race track bills? A. I do.

Q. Both at the regular session and special session? A. I do.

Q. Their failure of passage at the regular session, and their subsequent passage at the special session? A. I do.

Q. Now, Senator, I want to ask you broadly, whether or not you were ever approached during the session of 1908, either the regular session or the extraordinary session, using the word invidiously, with reference to your action upon those papers or either of them? A. I was not.

Q. Was any intimation ever made to you by anyone that a consideration, improper consideration, might be received for the action of any Senator upon the measures? A. No, sir.

Q. You heard me read the evidence given by Senator Travis yesterday, to Senator Fuller, when he was on the stand? A. I did.

Q. What is your recollection with reference to that statement made by Senator Travis? A. I do not recall the incident of the luncheon in which Senator Travis states that Senator Fuller and myself were present. I do not recall it, although it is possible that it might have been at a luncheon in the Capitol, where we often took luncheon, when we thought we had not time to go to the hotel. I do not also recall the fact that I told Senator Travis that I had been approached. I cannot think that I said that, because if I had said it, it would have been a falsehood, and I am not in the habit, and have not been in the habit, all my life, of peddling falsehoods to anybody.

Q. Did any Senator ever state to you, Senator, at the regular session or special session, or the time intervening between, that he had been improperly approached on the measure? A. No, sir.

Q. And you were recorded in favor of the measures at both sessions? A. Yes, sir.

Judge BRUCE: And, Senator Fuller, you were also?

Senator FULLER: I presume I was so recorded. I certainly voted for them.

DR. THEO. P. BAILEY, called as a witness, being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Doctor? A. Albany, New York.

Q. And what is your profession? A. Physician.

Q. And how long have you practiced that profession? A. Thirty years.

Q. And how long in Albany? A. All the time in Albany.

Q. Where is your office in Albany? A. 168 Hamilton.

Q. And how long have you had your office at that number?

A. Nearly all the time since I have practiced in Albany.

Q. Doctor, were you ever called to examine Senator Foelker?

A. Yes, sir.

Q. Just give me the circumstances; tell me the time and all the facts connected with it? A. The date, I don't remember, Judge.

Q. Was it in the spring of 1908? A. Well, it was the day that that bill was passed.

Q. The bill was passed on the 11th of June. Assuming that to be correct, it was on that day? A. It was on that day.

Q. 1908. You refer to the anti-racing track bill? A. Yes, sir.

Q. Now give us all the circumstances, Doctor? A. I received a telephone from my office that morning, asking if I would be in; that there was some gentleman wanted to see me — Senator McCarren and another gentleman, a Mr. Kelly.

Q. What is Mr. Kelly's first name, if you know? A. George T. Kelly. Asking me to wait at my office until they came, which I did. Senator McCarren was the spokesman, and asked me if I would go and see Senator Foelker, and examine him as to the advisability of his leaving his home and going to the Capitol to vote that day upon this bill, in which they were interested. I says to Senator McCarren, "Senator, I am a reputable physician. Is this all square?" I says, "I don't want to get mixed up in any political deals in any way." And I says further, "I am not a surgeon; you had better get a surgeon; that's what you want." "No," he says, "Senator Foelker has requested, and also his attending physician, who is with Dr. Murphy. has requested a consultation, and your name has been suggested, and I have been requested to go and ask you to go and to get some reputable surgeon to go with you, preferably Dr. Elting, of Albany." I telephoned Dr. Elting, who was then operating at the hospital, and he left his operation, and came down in an automobile, and I met him there at the house where Senator Foelker was stopping, about a block from my office, on Hudson avenue. Before entering the house Dr. Elting, who is acquainted with Dr. Murphy — I believe his name was, the attending physician who accompanied Senator Foelker — and I stated to Dr. Murphy just as I have stated here, that I had been requested by Senator McCarren to come there, stating that Dr. Murphy and Senator Foelker had requested a man from New

York, whom I have forgotten — some physician he mentioned — the name I have forgotten, I didn't pay much attention — it was no physician that I knew personally. Dr. Murphy says, "No, Dr. Bailey, we have requested no consultation." I says, "That settles it; good morning, Doctor." But Dr. Murphy says, "Doctor, I should be very happy to have you go in and see Senator Foelker." Doctor Elting and myself says, "We are not here for our own pleasure; we are simply here on business; and good morning, Doctor." That was all.

Q. You have stated the entire conversation and everything?
A. As nearly as I can remember it, Judge. I don't remember any other circumstances, except I think that Mr. McCarren said that someone would meet me there, mentioning the name of some party. Now, who that party was, I cannot remember. The name is not familiar. But, some interested friend of Senator Foelker's, who wished this consultation.

Q. Did Senator McCarren or Mr. Kelly go down with you?

A. No, sir.

Q. You did not see Senator Foelker at all, Doctor? A. I did not, sir.

Q. Did you go into the house? A. I did not enter the house.

Q. This conversation with Dr. Murphy occurred on the steps?

A. On the front steps of the house. As soon as I found out that it was a false alarm, I simply retired and told Dr. Murphy that.

Judge BRUCE: Mr. Kelly.

GEORGE T. P. KELLY, called as a witness and duly sworn
by the Chairman of the Committee, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Kelly? A. Albany, New York.

Q. What is your business? A. Attorney and counselor-at-law.

Q. Where are your offices? A. 86 State street.

Q. How long have you resided in Albany? A. All my life.

Q. And I presume you have practiced your profession ever since you were admitted? A. Yes.

Q. When were you admitted? A. In 1886.

Q. Have you ever held public office, Mr. Kelly? A. Yes, sir.

Q. What office have you held? A. Member of Assembly for several years from Albany.

Q. How many years? A. Several years.

Q. How many years, do you recall? A. Seven years.

Q. What period did that embrace, Mr. Kelly? A. From 1895 to 1901.

Q. You have heard the evidence of Dr. Bailey just given, with reference to a visit that was paid him by yourself and Senator McCarren? A. Yes, sir.

Q. At the time the anti-racing bill was pending, in the extraordinary session of 1908? A. Yes.

Q. And on or about the 11th of June of that year? A. Yes.

Q. Give me all the facts and circumstances, if you will, with relation to that visit? A. About half-past eight, the morning of June 11th, I met Senator McCarren and he asked me if I thought Dr. Bailey would make an examination of Senator Foelker, as to whether he would be able to come to the Senate and vote that day. He said a request had been made for him to have two reputable physicians examine him. So I told Senator McCarren, I said, "We will go and see Dr. Bailey." And we went up to Dr. Bailey's office. And on the way up I said to Senator McCarren, "Now," I said, "Dr. Bailey is not a surgeon, he is a physician, and he may not want to examine the Senator." So when we arrived at Dr. Bailey's office the doctor greeted us and asked us what the trouble was. And Senator McCarren said that a request had come to him to have two reputable physicians of the city of Albany examine Senator Foelker as to whether he would be able to go to the Senate that day and vote. Dr. Bailey said, "Senator, I am not a surgeon, I am a physician, but Dr. Elting attends to all my surgical operations," and he said, "I will call him up on the 'phone." So I think Dr. Bailey had me call up Dr. Elting at the hospital, and I told him that the doctor wanted to talk to him. So the doctor told him the circumstances, just as repeated here. But, before Dr. Bailey talked with Senator McCarren over the telephone — or before he talked with Dr. Elting, he said, "Senator," he said, "I don't intend to violate any professional ethics or to have Dr. Elting violate any professional efforts." He said, "Unless Senator Foelker's physician asks us to make an exam-

ination of him," he said, "We won't do so." So he said to Dr. Bailey, as Dr. Bailey has stated, that someone would meet Dr. Bailey and Dr. Elting at the house where Senator Foelker was boarding. So that is all there was to it. Senator McCarren and I left, and I went to my office, I think.

Q. Did Senator McCarren state who it was that had requested an examination be made of Senator Foelker? A. No.

Q. Did you know Senator Foelker? A. Yes, slightly, that was all. I had no personal acquaintance with him.

Q. Did Senator McCarren say anything to you, or to Dr. Bailey, as to who would pay Dr. Bailey and Dr. Elting for their services? A. No, sir; no, sir.

Q. When did you first talk with Senator McCarren about this matter? A. This morning, when I met him at the hotel, at about half-past eight.

Q. Had you ever said anything to him, or had any conversation with him with regard to it before that time? A. No, sir.

Q. Did he ever discuss with you the fact that Senator Foelker was coming up to vote, and a possibility of whether he would be able to vote or not? A. No.

Q. How did you happen to meet him that morning? A. I was in the habit of meeting the Senator every day. I knew him very well.

Q. Why did you meet him every day? A. Why, we were personal friends.

Q. Well, I know, but why meet him every day? A. Well, I would stop in the hotel in the morning on my way up to the court house, something like that, and say good-morning, Senator. For a good many years I have done that.

Q. Did you meet him that morning by appointment? A. No, sir.

Q. Or by any previous arrangement with him? A. No, sir.

Q. Had he communicated with you directly or indirectly, over the 'phone or otherwise to meet him that morning? A. No, sir.

Q. When you first came in what did he first say with relation to going to see Dr. Bailey? A. He said to me, "A request has come from New York early this morning asking that two reputable

physicians examine Senator Foelker, as to whether he will be able to come over and vote to-day." He said, "Do you think Dr. Bailey would examine the Senator and see if he is able to come over?" I said, "I don't know, we will go up and see Dr. Bailey." Then we left the hotel, and as I have stated, went right over to Dr. Bailey's office.

Q. Did he say from whom the request had come in New York?

A. No, sir.

Q. Who was the other physician whose name was mentioned to Dr. Bailey, that he cannot now recall? A. What do you mean, Judge?

Q. You recall Dr. Bailey's testimony, that Senator McCarren said that some physician in New York had asked that this examination be made, and the doctor said he did not know the physician, and therefore he did not recall the name? A. I do not recall the name of any physician being used. I just simply recall that Senator McCarren had said that a request had been made from New York early in the morning.

Q. When you and he were talking to Dr. Bailey, what name did Senator McCarren mention, from New York? A. I didn't hear him mention any physician's name.

Q. Why did Senator McCarren ask you whether you thought Dr. Bailey would make an examination? A. Dr. Bailey and I have been friends for a good many years. He is my family physician; and Senator McCarren knew Dr. Bailey. He had an acquaintance with Dr. Bailey; not a strong personal acquaintance but he knew Dr. Bailey for some years, meeting him in Albany probably once in a while.

Q. Why did McCarren inquire of you whether or not you thought Dr. Bailey would make an examination; why that doubt in his mind? A. I presume that was the first doctor that came to Senator McCarren's mind, Dr. Bailey, on account of knowing him.

Q. Why shouldn't Dr. Bailey make the examination; why the doubt in the Senator's mind? A. Why Dr. Bailey should not make the examination?

Q. Yes; Dr. Bailey is one of the best known physicians in that section of the State, isn't he? A. Yes.

Q. A physician of high standing, is he not? A. He said to

Senator McCarren, "Unless Dr. Murphy requests Dr. Elting and I to examine Senator Foelker we will not violate any professional ethics and not examine him.

Q. Did Dr. Bailey say, "Is this on the square? I don't want to be mixed up in any political matter?" A. Yes, that is true.

Q. What suggested that to the doctor's mind, and what suggested the doubt in the Senator's mind as to whether or not Dr. Bailey would make the examination? A. I don't know anything about that, sir.

Q. Dr. Bailey, as you have said, is one of the most reputable and one of the most widely known physicians in that section of the State, is he not? A. That is true.

Q. And if asked to go and make an examination of a patient, under the most ordinary circumstances would of course go and make that examination, wouldn't he? A. I am stating to you, Judge, just what Dr. Bailey said.

Q. I understand that, Mr. Kelly, but I am endeavoring to find out if I can whether you know what was in the Senator's mind that led him to doubt perhaps whether or not—— A. How can I know that?

Q. I want to know if he said anything or made any intimation that would reveal to you what was in his mind, that he doubted whether or not Dr. Bailey would make the examination, and he came to you as a personal friend of the doctor's to inquire? A. When the doctor said to him, "I want everything square in this matter," Senator McCarren said, "There will be somebody there." I don't think he said the name. And Dr. Bailey said, "We will not make this examination unless Dr. Murphy requests it."

Q. There had been a good deal of discussion in the papers at that time as to whether or not Senator Foelker would come up to the Senate chamber to vote, was there not? A. There was.

Q. In the Albany papers, and about the Capitol, and about the corridors of the hotels, wasn't there? A. Yes, sir.

Q. Didn't you think it very extraordinary that Senator McCarren should ask you if you thought Dr. Bailey would make an examination? A. No, no. The same as any friend, not knowing a doctor in Albany.

Q. Senator McCarren knew Dr. Bailey, didn't he? A. Not very well. They had just a slight acquaintance.

Q. Hadn't Dr. Bailey treated Senator McCarren? A. Never.

Q. Had you and Senator McCarren prior to that time ever discussed the question as to whether or not you thought Senator Foelker would be able to come up and vote? A. No, sir.

Q. Had you and Senator McCarren discussed the question of the anti-race track bill? A. We had.

Q. Frequently? A. Not very often.

Q. You knew the Senator's attitude with relation to the bills? A. Yes, sir.

Q. Did he express to you an opinion as to whether or not he thought Senator Foelker would vote that day? A. No.

Q. He had not? A. He never expressed any opinion.

Q. Had he ever said to you he didn't think he would come to Albany? A. No, sir.

Q. And if he did come, he didn't think he would come to the chamber? A. No, sir.

Q. Had you and he discussed whether the probability or possibility of his coming up to Albany, or coming to the chamber, if he came to Albany? A. No, sir.

Q. Had you taken any interest whatever in the race track bill? A. No, sir.

Q. Had the Senator asked you to do any work, or perform some service with relation to the bill, or to endeavor to use your influence against them? A. No, sir.

Q. He had not? A. No, sir.

Q. Well, did it seem anything extraordinary to you that Senator McCarren, with his tremendous opposition to these bills, should be going around inquiring for physicians and surgeons to examine a Senator with reference to his ability to come up and vote? A. Judge, he didn't; he only asked me, as I stated, would Dr. Bailey go up?

Q. Did that impress you as extraordinary? A. It did not impress me at all, one way or the other.

Q. You knew Senator Foelker was in the city, did you not? That he had come up the night before? A. Yes, I saw it in the papers in the morning.

Q. You saw he was accompanied by his physician, and also by Canon Chase? A. Yes, sir.

Q. Didn't it seem to you rather strange, if Senator Foelker wanted an examination made, that his friends, or Dr. Murphy, or Canon Chase, didn't select the physicians to make it, rather than Senator McCarren? A. Senator McCarren said a request had come early in the morning.

Q. From New York? A. Yes, to him, to have two reputable physicians examine Senator Foelker.

Q. He told you that? A. Yes, sir, and he told Dr. Bailey that, too.

Q. Did he say who had made this request? A. No, sir, he didn't say who made the request.

Q. Well, I understood Dr. Bailey to say he mentioned the name of some physicians; is that your recollection? A. I don't recall the name of any physician being mentioned.

Q. Where did you and Senator McCarren go after you left Dr. Bailey? A. Why, we walked down the street, and Senator McCarren went to the hotel, and I went to my office.

Q. What did the Senator say to you after you came out in regard to what had taken place in the doctor's office? A. The Senator didn't say very much; he was a very quiet man.

Q. That is correct. What little he did say was of great importance. What did he say? A. He didn't say anything, Judge.

Q. He was very quiet then, that day. Did he make any remark at all, Mr. Kelly, when he came out? A. Not a remark, no.

Q. Did you see Senator Foelker that day? A. Yes, I saw him at the Senate chamber.

Q. You were there when the vote was cast? A. Yes.

Q. Did you have any conversation with Senator McCarren after you left Dr. Bailey's office and before the vote was cast? A. No.

Q. Or afterwards? A. Well, I think I met him in the afternoon when I was going away.

Q. What did the Senator say with regard to the result of your visit to Dr. Bailey, and Dr. Bailey's visit to Senator Foelker? A. He didn't say anything.

Q. You have told me every one of the facts and circumstances in connection with the matter whatsoever? A. Yes, sir.

Q. To whom was Dr. Bailey and Dr. Elting to report after their examination? A. Why, as I recall it, Senator McCarren said some man would meet them there at Senator Foelker's house.

Q. Did he say who that was? A. No.

Q. Did he say what relation that man had to Senator Foelker? A. No, sir.

Q. Did he say whether it was an Albany man, or a man outside of Albany? A. No.

Q. Well, to whom was Dr. Bailey and Dr. Elting to report the result of their examination? A. I think Dr. Bailey was to report to me, Judge.

Q. To you? A. Yes, I think that was — that is my recollection of it.

Q. Were you to call at the doctor's office? A. I think he was to call him up on the telephone and ask him what the result of the examination was.

Q. When you called him up, what did he say? A. I don't think I called him up.

Q. Why not? (No answer.)

Q. Why not? A. I don't know. I don't think I called him up.

Q. Well, why not? A. I don't recall.

Q. Well, it was an important matter; you and Senator McCarren had gone and seen Dr. Bailey, and had been in communication with Dr. Elting, and they had gone down to make the examination; why didn't you call him up and see what the result was? A. I think this: I was to call Dr. Bailey up at a certain hour, as I recall it now; and I had gone up to the Capitol, and I think Senator Foelker came in, or somebody said he was coming in; and that is the reason I didn't call up Dr. Bailey.

Q. Why not call him up and hear the result of the examination? A. I think this party, who Senator McCarren said would meet Dr. Bailey there, was to have some affidavits signed, or something.

Q. By Dr. Bailey and Dr. Elting? A. Yes.

Q. As to the result of their examination? A. Yes.

Q. And you were to call Dr. Bailey up and ascertain — were you going to draft the affidavits; you are an attorney? A. No, there was nothing said to me about drafting affidavits.

Q. What were you going to do with the information you got from Dr. Bailey? A. I think I was to tell Senator McCarren of the result of the examination.

Q. What was the Senator then going to do? A. I don't know.

Q. Who was going to draft those affidavits? A. I don't know, Judge, who was going to draft them.

Q. Were they to be prepared in your office? A. I don't know; nothing was said about who would draft them.

Q. Who was this man who was to get the affidavits? A. I don't know; I don't know who the man was; I didn't know who he was or anything about him. Senator McCarren simply said some man would be there to meet Dr. Elting and Dr. Bailey when they got there.

Q. What time of the morning was it you called on Dr. Bailey? A. About half-past eight or nine o'clock, I think.

Q. How soon after that did Dr. Bailey, and the surgeon, go down to Senator Foelker's house? A. I don't know. I went right away with Senator McCarren, walked down the street, and he went to the hotel, and I went to my office.

Q. Did Dr. Bailey say how soon he was going down, and Dr. Elting was going with him? A. There was a time agreed upon by Dr. Bailey and Dr. Elting over the 'phone when they should go there.

Q. You heard Dr. Bailey state at the time the telephone message went to Dr. Elting he was operating, and he left the operation and came immediately; and it was only a block from Dr. Elting's house, so it must have been a very short interval? A. It was one block to the house; but it was more than one block to the hospital where he was operating.

Q. And he came down immediately? A. I don't know about that.

Q. Dr. Bailey said he came down on the car; so that a very short time must have elapsed between leaving the operation and coming right down on the car? A. Yes.

Q. What time did the Senate convene that day; 11 o'clock? A. I think 10 o'clock, I won't be sure. I think 10 o'clock, but I am not sure.

Q. Did you go up to the Capitol without calling up Dr. Bailey?
A. Yes.

Q. Why? This was a most extraordinary matter. Here was an eminent physician and an eminent surgeon who examined a Senator to determine whether he would be able to go to the Capitol and vote, and after they made the examination you were to call him up on the 'phone; why didn't you call him up? A. Because, as I have said to you, 'Judge, when I got to the Capitol I heard some people saying that Senator Foelker was coming over, and I think they said he was down stairs, that is the reason I didn't call up Dr. Bailey to find out whether he had made the examination or not.

Q. What difference did that make, whether the Senator came up or not, as to the result of the examination? A. I presume that examination was to be made for the purpose of ascertaining whether he would be able to come over or not, and his coming showed to my mind probably that no examination had been made, the man was able to come over and vote.

Q. The examination may have been made, and they have stated to him it was perfectly safe for him to come? A. That may have been true. I don't know nothing about it.

Q. It would be a great service to the Committee if you would give us some fact by which we could identify this man who was to meet the doctor down there and draft those affidavits? A. Judge, I could not.

Q. The drafting of affidavits of such importance would not be entrusted to some man of no importance. Can you recall who it was? A. I cannot. I simply heard Senator McCarren say, as Dr. Bailey says, "Some man would meet him there," meet the two doctors.

Q. How was the doctor to identify this man? A. I suppose he would probably introduce himself to him; I don't know.

Q. Was it a man who knew Dr. Bailey? A. I couldn't tell you that, Judge.

Q. Well, how was he to identify the doctor? A. I presume this man would know the two doctors would be there, and would introduce himself to the doctors. I don't know anything about it.

Q. When you came up with Senator McCarren did you pass by the house where Senator Foelker was? A. No, we went another street, over Pearl, up Beaver, and up Plain street, and then up Hamilton street; the building is the corner of Hamilton and Eagle streets.

Q. What did Senator McCarren say when he saw Senator Foelker coming in the Capitol? A. Senator McCarren was in the Senate chamber; I didn't see him.

Q. You didn't see him? A. No.

Q. Did you see him when you came up to the Capitol? A. No, I did not; I didn't see him.

Q. I understood you to say you saw him? A. No, I said I was to see him after I saw the doctor, and I didn't go to him.

Q. You didn't see him about that at all? A. No.

Q. Did you telephone him? A. No.

Q. Send any message to him? A. No.

Q. You knew most of the Senators, did you, Mr. Kelly, at that time? A. Quite a few, Judge.

Q. You knew Senator McCarren? A. Yes, sir.

Q. Did you know Senator Travis? A. Yes, slightly; just to say, "How de do," that is all. I think I was introduced to him once.

Q. Did you know ex-Senator Gardner? A. Yes, sir.

Q. Did you know Senator Gardner at Albany, during this session of 1908, either the regular session, or the extraordinary session? A. No, sir.

Q. You didn't see him in Albany at all? A. No, sir.

Judge BRUCE: Is there any question by any member of the Committee?

(No questions.)

Judge BRUCE: (To witness.) If the name suggests itself to you, the name either of the doctor in New York, or the gentlemen who was to meet Dr. Bailey, and draw the affidavits, will you communicate with me?

The WITNESS: I will.

Judge BRUCE: That is all the witnesses I have for to-day. The other witnesses subpoenaed have not arrived, and I do not

think we will wait longer for them. I will ask that we adjourn to Tuesday at 11 o'clock.

Chairman MERRITT: The Committee will adjourn to Tuesday at 11 o'clock.

Adjourned to Tuesday, November 22, 1910, at 11 A. M., at the Board of Estimate Room, City Hall, Borough of Manhattan, City of New York.

NINETEENTH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

Fire Insurance.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, November 22nd, 1910 — 11 A. M.

Present.—HON. EDWIN A. MERRITT, JR., *Chairman.*

HON. ALEXANDER BROUGH, *Vice-Chairman.*

HON. ROBERT F. WAGNER.

HON. WILLIAM W. COLNE.

HON. FREDERICK R. TOOMBS.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel.*

ALFRED HURRELL, Esq., *Assistant Counsel.*

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: Mr. Chairman: Counsel is not prepared this morning to continue on the subject which we have been investigating for some time, to wit: corrupt practices; and as I understand that it is the intention of the committee to adjourn after to-morrow over the Thanksgiving holiday, I may say that we expect to be ready to continue with that subject when the Committee reassembles on next Tuesday, which will be the 29th.

But, in order that the time may not be lost, in view of the fact that the Committee is required to report to the Legislature on the 15th of January, Counsel wishes to use the time of to-day and to-morrow in starting the investigation on the subject of fire insurance. You will recall, Mr. Chairman, that the resolution creating the Committee directs them to make an investigation of

the methods, reports, management, supervision and control of all insurance companies other than those doing life insurance business, including fire insurance companies, and State and local boards of fire underwriters, and the relations of said companies, exchanges and boards with legislation; including industrial life insurance. It is a very broad field, and quite important that all the time the Committee has at its disposal should be devoted to these subjects. And therefore, if agreeable to the Committee, I will start this morning the investigation of the question of fire insurance.

Chairman MERRITT: I think you had better put on the record, and also give directions to the stenographer, as has been discussed between Mr. Shotwell and counsel, that he be directed to so handle the record that when the hearings have terminated, the record may be continuous as to each subject; so, that as we have occasion hereafter to resume the inquiry on that phase of the inquiry which we have so far been following, that the record may be continuous as to that; and as to fire insurance and industrial insurance, it may also be continuous in those respects.

Judge BRUCE: I ask now to call Mr. Daniel F. Gordon.

DANIEL F. GORDON, called as a witness and being duly sworn, testified as follows:

Examined by Judge BRUCE:

Q. Where do you reside? A. Albany, N. Y.

Q. What is your business? A. I am now chief examiner of fire insurance companies in the Insurance Department of the State of New York.

Q. How long have you held that position? A. About a year and a half.

Q. How long have you been connected with the Department?
A. Upwards of nineteen years.

Q. In what capacity? A. The greater part of that time as an examiner; temporarily, as acting First Deputy Superintendent of Insurance, and acting Second Deputy Superintendent of Insurance, respectively.

Q. And in the discharge of your duties in connection with these

positions, what has been your relation to the subject of fire insurance? A. I am generally familiar with the conditions of the fire insurance companies operating in this State, more particularly with our own domestic companies.

Q. And have your duties, that you have mentioned in connection with the positions you have occupied, required you to spend a great deal of time in the investigation of the subject of fire insurance as conducted in our State? A. They have; particularly as far as the examination is concerned.

Q. Please state to the Committee the extent of those examinations, and generally what they have consisted of? A. The companies are examined primarily to ascertain solvency, and to see that the laws under which they operate in New York State are being complied with in this State.

Q. How many companies are there in this State doing fire insurance business? A. May I refer to a note for that, Judge?

Q. Yes. (Witness refers to paper). A. There are operating in the State of New York 45 domestic stock corporations; 91 corporations of other States, and 46 stock corporations of other countries; netting a total of 182. There are five domestic mutual corporations; three mutual corporations of other States, and 17 associations of Lloyds, and inter-insurance. In addition to those corporations and associations transacting the business of fire insurance, we have operating in New York State, one domestic marine; one mutual domestic marine; one foreign marine of other States, and 18 foreign marines of other countries. That makes a total of 18 marine companies, and 207 insurance companies.

Q. Now, in addition to these, are there county and town co-operative companies? A. There are.

Q. And do you know how many there are of those? A. I should say about 150, operating in towns and adjoining counties.

Q. Netting a total of the whole number of fire insurance companies doing business in this State of how many? A. Oh, 370 perhaps.

Q. Now, will you state the requirements of the law as to the organization, say, first, of domestic stock companies? A. Domestic stock companies, as organized in this State, do so under Article 3 of the Insurance law, I believe it is, and thirteen or more persons

may become a corporation for the transaction of the business of fire insurance in this State on filing a declaration of intention, copy of charter, and by-laws with the Superintendent, and on having paid in a minimum capital of \$200,000. The present law further requires that a surplus shall be paid in amounting to fifty per cent. of the capital. After an examination by the Department examiners to determine that the capital funds and assets claimed are in possession of the corporation, the Superintendent issues his certificate and authority to transact business.

Q. Now, what are the requirements of the law with reference to permitting fire insurance companies organized in other States to do business in this State. A. Fire insurance companies of other States are admitted only after an examination is made by this Department, or by the home State Department, of the condition of the company, after an application has been made to the Superintendent to transact business in this State, and on the agreement to pay the usual fees, licenses, &c. They are practically subject to the same regulations and rules as domestic stock fire companies.

Q. What are the laws with reference to permitting companies organized in foreign countries to do business in this State? A. Foreign companies are permitted to transact business in New York on depositing with the Superintendent of Insurance \$200,000. This deposit, however, may be made with the departments of other States. In addition to such deposit the company is compelled to have on deposit here, with United States trustees \$300,000. It files a deed of trust with the Superintendent of Insurance, — rather a certified copy of such deed, — and also a capital statement, which capital statement is verified by an examiner of the Department before the company is permitted to transact business.

Q. And are these companies subject to the same rules and regulations as companies organized in other States, or companies organized within our own State? A. They are

Q. What are the requirements for the organization of mutual companies, outside of county and town co-operative companies? A. The domestic mutual companies operate here under a rather involved and drastic law. In the counties of New York and Kings corporations of this character may organize after having received applications for insurance from 400 applicants. The premiums on

which applications shall amount to \$200,000; of which \$40,000 shall be paid in in cash, the balance to be represented by notes of solvent parties. The Superintendent of Insurance is called upon to pass on and prove the solvency of the note makers. In counties other than New York and Kings, corporations of this character may organize with one hundred thousand dollars, of which \$20,000 may be paid in in cash, and notes of solvent parties received for the balance. The Superintendent, of course, is likewise called upon to pass upon the solvency of the note makers. All applicants must be real estate holders; in the County of Kings and New York to the extent of \$5,000; and in other counties to the extent of \$500. They operate on a part note and part cash basis; or a wholly cash basis. The premium is limited, and their operations are local. We have only three companies, — no; we have five companies in New York State, mutual companies; three of these were organized after the codification of insurance laws in 1892, and the other two, — I guess two of them, — were organized, — no, I think the two now existing were organized in 1892 after the codification of the insurance laws, and the other three away back in 1836 and 1837, long before the creation of the Insurance Department.

Q. Now, are all these companies, the stock companies organized within our own State, known as domestic and mutual companies, and organized within our own State, and the companies which are organized in other States, and the companies which are organized in foreign countries, all subject to the same supervision of the Department of Insurance? A. Yes, practically. There are different regulations affecting different companies, in accordance with the several articles of the insurance law under which they operate; but they are all subject to the Superintendent's jurisdiction.

Q. What jurisdiction, or what power of supervision has the Superintendent of Insurance over the county and town co-operative companies? A. He had no power previous to the enactment of a law by the last Legislature. These corporations and associations simply reported to the Secretary of State. By this recent law the companies are called upon to submit annual statements to the Department, and to the Department's general supervision.

Q. Is it necessary for an agent of a company organized in a sister state, or for an agent of a company organized in a foreign

country, to have a license before he can do business in New York State? A. The Superintendent of Insurance issues a certificate of authority to all persons who may be appointed by such foreign countries before such person is permitted to transact the business of insurance in the State.

Q. It is not necessary, is it, for an agent doing business for a domestic company to obtain such a license? A. No, sir.

Q. Are these regulations of law with reference to the agents of companies organized in sister States, and companies organized in foreign countries, the same? A. They are.

Q. Well, give me a brief statement of what those regulations are, with reference to the licensing of agents of companies organized in sister States, and of those organized in foreign countries? A. As I understand it, the companies appoint their own agents, and notify the Superintendent of Insurance of such appointment, whereupon he issues a certificate of authority. The Superintendent is not called upon to pass upon the responsibility of an agent so appointed. In this respect the law is different from the law affecting the appointment and authorization of agents operating for life insurance companies.

Q. Are there any other provisions that you have not mentioned? A. Affecting agents, no, sir.

Q. What is the amount of capital invested by companies organized in our own State, as domestic companies, doing a fire insurance business? A. The total amount of capital invested by domestic stock corporations of this State aggregates the sum of \$21,000,050.04.

Q. And how much surplus? A. Such companies have an aggregate surplus amounting to \$63,351,265.14.

Q. And how much capital is invested by companies doing business in this State, organized in sister States. A. The total capital invested by stock companies of other States operating in this State aggregates the sum of \$47,962,066.66.

Q. And how much surplus would they carry? A. Such companies have a surplus amounting to \$62,475,907.05.

Q. And what is the capital of companies doing business in this State that are organized in foreign companies? A. The capital of foreign companies is held in New York State under Section 27

of the Insurance Law, and is to be the difference between the amount which the corporation may have on deposit with departments in the United States, or in the hands of its United States trustees, and the entire amount of its liabilities. Of course, the capital will therefore vary from time to time. However, the State calls upon such corporations to have a balance of capital so collected, to the extent of \$200,000, which is the minimum capital required of our own companies.

Q. What, then, would be the total of the capital of domestic companies and of companies organized in sister States? A. The aggregate of such capital amounts to \$69,012,166.66.

Q. And their aggregate surplus? A. Their aggregate surplus amounts to \$164,221,862.52.

Q. And have you before you charts which have been prepared from the statistics of the Department, showing the amount of capital and surplus of each of the companies, making up the domestic companies and the companies organized in sister States and foreign countries. A. We have prepared such tables.

Q. And have you them before you? A. I have.

Judge BRUCE: I offer these tables in evidence and ask to have them marked.

(The tables referred to by witness marked as one exhibit Exhibit A.)

Q. This \$164,221,852 includes also the surplus carried by foreign companies, does it not? A. It does.

Q. In what amount? A. In the sum of \$38,394,690.33.

Q. If you take that from the total amount of \$164,221,852, that would leave the surplus carried by the companies organized in our own State and in our sister States, of how much? A. That leaves a balance of the surplus affecting domestic stock companies and stock companies of other States, of \$125,827,172.19.

Q. Now, what was the total amount of loss paid by companies doing business in New York State in the year 1909? A. Do you mean by New York companies, or all companies?

Q. All companies? A. The total losses incurred by domestic stock companies, companies of other States, and companies of other countries, in the year 1909, amounted to \$133,014,304.88.

Q. And what was the total amount of premiums collected by such companies during the year 1909? A. The total premium income of such companies amounted to the sum of \$271,442,397.75.

Q. And have you before you charts made from the records of the departments showing the amount of such losses and premiums collected by such companies? A. I have.

Q. And that is contained, is it not, in the exhibit previously marked; Exhibit A? A. Yes, sir.

Judge BRUCE: I also offer in evidence these charts, which are a part of Exhibit A already marked.

Q. Now, will you explain the method and the amount of taxes paid by domestic stock companies? A. Domestic stock companies pay a tax of one per cent. on the gross premium income, under section 187 of the Tax Law; which tax is paid to the State Comptroller.

Q. Is this tax uniform with all domestic companies? A. It is.

Q. Give me an explanation of the taxes to be paid by foreign stock companies of other States? A. Foreign stock companies of other States are subject to a reciprocal tax, under section 33 of the Insurance Law, and to a tax of two per cent. of the gross premium income, under section 133 of the Insurance Law, which is paid to the local fire departments. In computing the tax under the reciprocal provision, credit is given for whatever amount the taxes may have been, paid under section 133.

Q. Are the taxes paid by foreign companies the same, whether they are companies organized in other States, or companies organized in other countries? A. No, sir. The companies of other countries are taxed under the same provision of law. Section 133, the tax being payable to the local fire department authorities; but in addition to that, such companies pay a tax of one-half of one per cent. on their gross premium incomes, to the State Comptroller.

Q. I believe you said that no license was required by fire insurance agents of domestic companies? A. No, sir.

Q. Is any license required of the sub-agents of foreign fire companies? A. All persons designated as agents of foreign companies are assumed to receive from the Superintendent of Insurance a certificate of authority before business may be transacted.

Q. Is this true of sub-agents, as well as agents of foreign companies? A. It is.

Q. Are there foreign mutual fire insurance companies doing business in New York State? A. Yes, sir; I think we have three corporations of that character.

Q. Are they corporations organized in sister States, or organized in foreign countries? A. Organized in other States.

Q. And what is the law with reference to their admission to doing business in this State? A. Corporations of this character are admitted to transact business here on filing with the Superintendent of Insurance a certified copy of the articles of incorporation and by-laws, and the appointment of the Superintendent of Insurance as attorney for the service of process, and an agreement to pay the usual taxes and fees. These corporations are required to keep on deposit in this State, or in its home State, the sum of \$200,000, invested in capital securities.

Q. What is the amount of tax levied upon the domestic stock companies,—what is the amount of fees levied upon domestic stock companies? A. Domestic stock companies are required to pay a tax of one per cent. of the gross premium income.

Q. What did this tax amount to in the year 1909? A. Judge, that goes to the Comptroller; I do not think we have any record giving that; these are our own taxes, for license fees and certificates of authority.

Judge BRUCE: I withdraw that question for the moment.

Q. In addition to this tax, isn't there a tax, or fees, which they are required to pay to the Department of Insurance? A. I haven't any information on that point, Judge.

Judge BRUCE: I withdraw that question for the moment.

Q. What tax is levied upon the companies organized in sister States, and doing business in this State; is it the same as is levied on domestic companies? A. No, sir. The corporations of other States transacting business here pay a tax of two per cent. to the local fire department authorities, and a further tax under the reciprocal requirements of section 33 of the Insurance Law.

Q. And what taxes are levied upon companies organized in foreign countries and doing business in this State? A. A tax of two per cent. payable to the local fire department authorities, and

a tax of one-half of one per cent. of the gross premium income paid to the State Comptroller.

Q. You have so far referred to stock companies, have you not?
A. Yes, sir.

Q. Now, is there any tax laid upon mutual companies?
A. Under the present law,—mutual companies of other States!

Q. Yes. A. They pay a tax of one per cent. on the gross premiums collected annually.

Q. Is there any tax laid upon mutual companies organized in our own State? A. I assume the usual tax of one per cent. paid to the Comptroller; that is for all mutual companies as well as stock companies.

Q. Is there any tax laid upon co-operative town and county companies? A. Not that I know of, Judge. These corporations have come under the supervision of the Department, as I before stated, recently, and they have yet to file their first annual statement with the Department.

Q. Now, in addition to these taxes that you have mentioned that are paid by domestic stock companies, mutual companies organized in other States, stock companies organized in other States, and foreign stock companies, do they pay any additional fees or taxes? A. Corporations are called upon to pay various fees for filing certificates of authority, issuing certificates of authority, certificates of compliance, copies of annual statements, filing statements and various other matters for which these fees are charged, as appears in the Insurance Law.

Q. What are the requirements of Law as to the annual statements of fire companies? A. The law compels all corporations operating in this State to submit to the Superintendent of Insurance on or before February 15th of each year, a statement covering the condition of the company on the previous December 31st.

Q. And will you tell me, in a general way, what these statements must contain? A. These statements contain a return of all income and disbursements, of assets and liabilities, together with accompanying schedules particularly explaining various items of assets, liabilities, receipts of disbursements.

Q. Are these upon uniform blanks? A. They are practically throughout the United States. The blank used by Department is uniform.

Q. And by whom are these blanks prepared? A. The blanks are prepared by the Blank Committee of the National Convention of Superintendents of Insurance Commissioners.

Q. What are the requirements of law as to the examination of fire insurance companies doing business in this State? A. The law now calls upon the Department to examine fire insurance companies at least once in every five years.

Q. These companies under their charters are permitted to transact what business; stating it generally? A. They are permitted to write insurance against loss by fire, lightning, tornado, wind storm, earthquake and the risks of inland marine, as well as all the risks of ocean marine and transportation, including insurance on automobiles.

Q. What is understood by the term Lloyd's Insurance? A. The Lloyd's Insurance Associations are merely aggregations of individuals who have banded together to transact the business of insurance in accordance with particular articles of agreement affecting each individual Lloyds, patterned somewhat after the famous London Lloyds.

Q. How many companies of this character are doing business in this State? A. We have at the present time, I think, about seventeen associations of this character.

Q. Are they domestic or foreign? A. Entirely domestic.

Q. There are no Foreign Lloyds, then, doing business in this State? A. No foreign Lloyds authorized to transact business in this State.

Q. Well, do you mean by that, or to imply from that, that there are foreign Lloyds doing business in this State who are not authorized to do it? A. It is general information that the London Lloyds operate here extensively.

Q. Upon what is that opinion based? A. General rumor and evidence, and the fact that they are.

Q. Well, if they are so doing, they are doing it in violation of law, are they not? A. If these associations operate here in this State through representatives they are violating the law.

Q. And if they are violating the law, their business should be suppressed, should it not? A. It should.

Q. Who has the power to suppress it? A. I assume the Super-

intendent of Insurance may take action where he has received evidence that individuals are operating in this country for the Lloyds Associations, and may submit such evidence to the District Attorney.

Q. And also the Attorney-General? A. And also the Attorney-General.

Q. The law provides for a standard fire insurance policy in this State, does it not? A. It does.

Q. Now, how is this policy affected with reference to provisions for damage by wind storms, earthquake, etc.? A. Very frequently the fire insurance, standard fire insurance, contains an endorsement or a rider providing against loss by other contingencies, aside from fire. However, in certain cases the companies issue forms of contract other than the standard forms, providing against loss—for insurance, by tornado.

Q. Is there any standard form of policy for inland marine insurance? A. There is not.

Q. What do you understand by the term “unearned premiums?” A. The unearned premium fund of a fire insurance company is that proportion of the premiums which they may have enforced, that is returnable to the assured on cancellation of this policy by the company. It is the portion of a premium which the Company has not earned and yet has in its possession, and which under the law it is required to return to the insured in the event of surrender of his policy prior to its expiration and in the further event if that company cancels the risk.

Q. How is this unearned premium treated by the companies under the Insurance Law? A. It is treated and carried as a liability in all statements furnished by the Company and in all reports made by Examiners of the Department.

Q. What do you understand by the term “short rate?” A. The short rate cancellation is cancellation based upon a customary table in use by the companies where an application for cancellation has been made by the assured and not by the company. The policy cancelled by the company, the return premium is pro rata; the full unearned where the application is made by the assured is returned and is based upon the short rate cancellation.

Q. Well, under that system, then, the insured pays a higher rate

for the time in which his policy is in force? A. If he elects to cancel himself?

Q. Yes. A. Yes. It is a statutory provision. The law on the point. I assume that the rate charged for the shorter period of time is greater than for the longer period of time.

Q. But if a company itself cancels the policy it is required to return it pro rata? A. Yes, sir.

Q. Is that a provision of law also? A. Yes, sir.

Q. What do you understand by the term "re-insurance reserve" as used in the insurance business? A. Re-insurance reserve is nothing more than the unearned premium fund. It is assumed to be a sum sufficient to reinsure the policy obligations of the Company in a solvent corporation. In fact, it is a greater sum than is necessary, because it contains also a commercial credit constituting the commission which a company may receive for transferring its business.

By the CHAIRMAN:

Q. And that has reference to the custom of some of the companies of reinsuring in other companies some of their risks? A. Yes, sir. They frequently re-insure large blocks of business and receive a commission of thirty-thirty-five and sometimes as high as forty per cent. for reinsuring that business.

By Mr. BRUCE:

Q. That is what they would have required to have paid agents and other expenses of the business? A. That is right.

Q. And when they reinsure their risks, why they reserve this profit to themselves? A. They do.

Q. What are the usual expenses of placing business? A. You mean the commission?

Q. Yes, by an agent? A. Why, I should say 5 per cent.

Q. That would be about the average? A. I should say so.

Q. Some is higher and some lower, isn't it? A. Yes; various risks and various classes of business.

Q. And the higher commission is paid upon what class of risks? A. Upon the preferred business.

Q. In other words, business which entails the least risk upon

fire insurance they pay the largest commission to acquire?
A. They do.

Q. And the business which entails the largest risk to the companies they pay the smaller commission to acquire? A. As usual.

Q. Well, why are there certain risks which are called preferred?
A. A preferred risk is considered the best character of risk obtainable by a company. It is usually, I should say, a dwelling house risk, household furniture or mercantile establishments protected by sprinklers.

Q. And what are the most hazardous risks — speaking generally now? A. Well, risks in a congested district of large cities for one thing; railroad risks; cotton risks; oil risks.

Q. Well, if the premium was laid equitably with relation to all risks, there would be no preferred and no extra-hazardous risks, would there, in so far as the premium were concerned? A. I should say not.

Q. Then, by reason of this inequitable way, if it be inequitable, of levying premiums, the man whose premises are a preferred risk is in a measure carrying the burden of the man who has an extra-hazardous risk? A. I suppose so.

Q. What do you understand by the term "Conflagration Reserve?" A. The term "Conflagration Reserve" is, I should say, a reserve which may be used by the companies in the event of conflagrations or extensive fires.

Q. Well, is this provided for by law? A. Yes, there are three provisions of the Insurance Law, three sections rather, of the Insurance Law, Sections 130, 131 and 132, which treat of the formation of two special funds, one known as the Special Reserve Fund, and the other as the guarantee surplus fund. The Special Reserve Fund is deposited with the State Insurance Department, and the Guarantee Surplus Fund is held by the Companies. These two funds are formed by a division of the surplus which a company may have in its possession. After the formation of the funds the corporation may add, from time to time, a sum to the surplus reserve fund, and a like amount to the credit of the surplus fund under the Special Reserve Fund held in Albany, which remains there. The guarantee surplus fund may be used for the payment of expenses and losses. In the event of a conflagration in which the

claims of the company are greater than its capital and guarantee surplus, the Special Reserve Fund is immediately held to protect other claimants than those who may be such at the time of the fire or at the time of the conflagration, and the claimants take such reserve by reason of the conflagration. The company then has the right to segregate this special reserve fund, and the amount of its entire unearned premium fund to rehabilitate the Company and start it anew. The conflagration policy holders for loss of payments have no right to any of the unearned premium fund or the special reserve fund.

Q. And how are these funds proportioned in each company under the law? A. The corporation may create the fund, and add, from time to time, surplus as accruing. However, the companies do not devote their entire surplus which they may possess in these funds of this character, and besides the guarantee surplus, and special reserve fund, very many of the companies have surplus in addition to those two funds.

By the CHAIRMAN:

Q. This is exceedingly technical. I do not seem to get this idea. Is it true that people having a loss have the benefit of all the surplus the company may have necessarily? A. They have not the benefit of the amount of the unearned premium fund or of the special reserve fund. The moneys composing those two funds are segregated and kept apart and are not available for the conflagration loss claimants.

Q. By virtue of some statute? A. Yes, sir. It is very plainly set forth in those sections of the insurance law—sections 103, 131 and 132.

By Mr. YOUNG:

Q. Now, who determines the amount of these funds? The corporation itself? A. Yes.

By the CHAIRMAN:

Q. Does the insured have any knowledge of this delightful system of dividing up? A. All policies issued by corporations

operating under this so-called Safety Fund Law must bear a stamp that they are issued in accordance with the provisions of this law, but what the law is I assume the policy holder perhaps does not know any more than——

Q. Everybody is supposed to know the law, I suppose. How does it work out? A. Why, Mr. Merritt, as far as I know, no Company — domestic company — operating under this law, has ever taken advantage of it, and of course there was a great opportunity during the California conflagration. But none of our domestic companies operating under the law take advantage of its provisions.

Q. Of course they could not establish these special reserve accounts after the fact of the fire or destruction of the property, I take it? A. No.

Q. But they all do have these special funds? A. Oh no; not all of them.

Q. Some of them? A. I should say perhaps there may be a dozen operating under that law.

Q. I cannot understand the theory of that? A. You see it prefers a policy holder whose property has not been burned. He has paid in a premium, which, I assume, may be a trust fund in a way. The company holds your premium until the expiration of your risk.

Q. Is that a sort of inducement to him not to burn his property? A. I do not suppose a policy holder knows very much about this law.

By Mr. BRUCE:

Q. What proportion, under the law, may this special reserve fund bear to the surplus of the company? Let me ask you first: Is it entirely optional under the law whether a company shall have such a fund? A. It is.

Q. And if optional, how much may this fund be in proportion to its surplus or its capital? It has reference, does it not, only to the capital of the company? A. It has reference to the capital of the company.

Q. What proportion may this fund bear to the capital of the company? A. I believe the fund created may amount to the entire capital, may it not?

Q. You mean by that the special reserve fund and the guarantee reserve fund? A. The special reserve fund and the guarantee surplus fund, both together, may amount to the total of the capital.

Q. How many companies did you say had taken advantage of these provisions of law? A. I am not certain about the figures I should say probably a dozen.

Q. Well, this fund would become operative only in the case of a large conflagration, would it not? A. That is all.

Q. Not in the case of ordinary losses? A. No, sir; extensive conflagration or conflagrations.

Q. Now, there are in this State what are known as fire insurance agents, are there not? A. There are.

Q. Those are persons employed by the company, and who represent the company in the transaction of its business, are they not? A. Yes, sir.

Q. They are paid by the company and are the agents of the company? A. They are.

Q. Now, in addition to that we have a class of people known as insurance brokers, do we not? A. Yes, sir.

Q. Just give us the distinction between an insurance broker and insurance agent? A. The insurance broker in this State is held to be the agent of the assured; while the agent of the company he represents the company and not the assured.

Q. The company then is bound in law by the acts of its agent? A. It is.

Q. And it is not bound by the acts of the broker? A. I should say not.

Q. The broker binds the insured? A. He represents the assured.

Q. Who pays the broker? A. The agent pays the broker.

Q. You mean the company? A. I mean the company pays the broker. Of course the commission comes from the company.

Q. And are included in the premiums paid upon the policy? A. Yes, sir.

Q. Then we have this situation, if I am correct: We have agents who directly represent the company and are paid by them and bind the company, is that correct? A. We have.

Q. And we have brokers who are paid by the companies, but

who represent and bind the insured? A. Yes, sir. I do not know that you would say that would be so in each individual case. A broker will represent the assured, and he may receive, of course, compensation from him, but this commission is paid by the companies. The insured pays the full premium covering his policy, and the commission is deducted by the broker, before it reaches the Company.

Q. Well, we have the situation, do we not, that a man who is representing the insured, and who binds him, receives his compensation from the Company? A. Yes, sir.

Q. Which is included in the premium which he payed? A. Yes, sir.

By the CHAIRMAN:

Q. You said he might receive it also from the insured? Does he ever receive it except from the company? A. He may, Mr. Chairman, be employed by the assured under a salary or some other basis.

Q. Is that true of any of these people who are called insurance brokers? A. Why, I should say it might be. I should say a man operating for Macy & Company, or some of the big, large dry-goods houses, perhaps receive salaries.

Q. Do you know, as a matter of fact, whether they do or not? A. I do not positively.

Q. He gets a commission of course? A. Yes, he gets a commission.

By Mr. BRUCE:

Q. Is any license required of the agent of a company to do business in this State? A. As before stated, the agents of foreign states and foreign country companies are licensed, but not our domestic companies.

Q. Is any license required of a broker to do business in this State? A. No, sir. We have no supervision over the acts of brokers. In Massachusetts the law there licenses brokers.

Q. But no license is required in this State? A. No, sir.

The CHAIRMAN: Just a question, Judge.

Q. Assume that it is true that the broker may receive a compen-

sation from the insured, does not that work out in the case such as you mentioned, perhaps, to result in a preferential rate to the insured by his taking that broker's commission, and getting the benefit of it, or at least getting a better rate than one less extensive in the final result, than other persons who are insured under the same contract? A. I do not know.

Q. Well, suppose that the broker was the employee of a business house, and was on a salary, and as part of his duty he was to get this insurance, and they regarded it also as part of his duty to allow them, out of that commission whatever that commission would be, it would operate to give them a better rate than a smaller man who did not have duties of that kind to have performed in so large a way, wouldn't it? A. Well, of course, the payment he receives is entirely a matter between himself and his principal whom he represents; while the insurance broker, I assume the same amount of commission is paid to him as would be paid to the insurance broker.

The CHAIRMAN: I can easily see that. I wondered if it did not amount to a preferential rate.

By Mr. BRUCE:

Q. By whom are these brokers licensed in New York City?

A. By the New York Fire Insurance Exchange.

Q. And what is the New York Fire Insurance Exchange? A. It is a self-constituted exchange which licenses brokers, and has other duties incident to their regulation.

By Mr. COLNE:

Q. Under any authority of law?

By Mr. BRUCE:

Q. It is an incorporated institution? A. Not that I know of. It is a rate making institution.

Q. It not only licenses brokers, but it also makes the rate, does it? A. It does.

Q. And it is made up of members of the Fire Insurance Companies doing business in this city? A. Yes, sir.

Q. It is not an incorporated institution, is it? A. No, sir.

Q. And it has no authority in law to license brokers? A. No, sir.

Q. But it does license brokers doing business in this city? A. Yes, sir.

Q. And a broker who does not hold a license from the Fire Insurance Exchange, practically is unable to do fire insurance business in this city? A. Practically.

By Mr. TOOMBS:

Q. But not all the fire insurance companies are in that institution? Are not a few outside? A. There are a few outside.

Q. What is the proportion? A. I should say a small proportion that are not members of the Exchange.

By Mr. BRUCE:

Q. What proportion would you say were members? 95 per cent? A. I do not know the figures, Judge. I should say probably you are correct in your estimate.

By Mr. FOLEY:

Q. This Exchange fixes the rates, do they? A. Yes.

By Mr. BRUCE:

Q. How many brokers are there doing business in the City of New York licensed by the Exchange? A. I should say about 8,000.

Q. You are speaking now of Greater New York? A. Greater New York.

Q. Are there any brokers in this city from outside of Greater New York? A. There are.

Q. In cities or in the country districts? A. In both.

Q. Are they required to obtain the license? A. It is my understanding that they are not licensed by any association or exchange outside of the City of New York.

Q. And do you know how many there are outside of the City of Greater New York? A. No, sir.

Q. What are factory mutuals? A. The factory mutuals are mutual corporations whose members I should say own factories or mercantile establishments and are banded together for mutual protection against fire losses.

Q. How do they operate? A. They collect premiums and assessments as thought to be necessary, refunding from time to time the amount of premium which has not been used in the payment of losses and expenses.

Q. Would I be correct if I said they were groups of manufacturers who insure one another? A. Yes, sir.

Q. In what sections of the country are the most successful ones organized? A. Principally in Massachusetts, Connecticut, New Hampshire and Rhode Island.

Q. Are they also organized in our home State? A. No, sir, not that I know of.

Q. Are there no factory mutuals in this State? A. No, sir.

Q. Is there anything to prevent their organization here? A. There is one mutual law, as I referred to before, under which corporations may organize, but no special factory mutual law.

Q. Well, is there anything upon our statute books which prevents any group of individuals from entering into an agreement to insure one another? A. Now, you are touching upon the Lloyds situation. The Lloyds associations are mere aggregations of individuals who are banded together for mutual protection, and for the protection of outsiders, so far as interinsurers are concerned, which operate under the Lloyds so called charters, they insuring each other, but they are not necessarily owners of mercantile establishments, as the insured members of the factory mutuals are.

By Mr. HURREL:

Q. They do not do business on the same plan as the factory mutuals? A. No; the factory mutuals collect assessments and premiums, and return a portion of the assessment at the expiration of the policy year.

By Judge BRUCE:

Q. Is there anything that you know of in the law which prevents what you mean by the term purely inter-insurance, including

only owners of property who are insured? A. I do not think the insurance law permits the insurance to be carried on in that manner.

Q. Do you know whether or not any of these factory mutual insurance companies organized in other States are doing business in this State? A. No, sir, they are not.

Q. Do you know whether or not any of the manufacturers in this State are members of factory mutuals organized in other States? A. I don't know.

Q. Do you know what line of policy is usually pursued by the persons who are seeking insurance, when they are unable to obtain the amount of insurance which they want to obtain in various companies? A. The assured desiring more insurance than he can procure from admitted operations may procure the balance needed by making affidavit to the effect that he is unable to secure sufficient insurance to protect his property. The Superintendent of Insurance licenses certain individuals in this State on the payment of a \$200 annual fee, authorizing such individuals to procure policies of insurance in unauthorized corporations. These policies are, as I said before, procured on affidavits; the affidavit must be executed by the assured and by the special licensed agent.

Q. That is provided by section 137 of the Insurance Law, is it not? A. Section 137 of the Insurance Law.

Q. Is that largely taken advantage of? A. I should say we have about twenty-five special licensed agents here.

Q. Do you know the amount of such insurance that is carried in this State in unauthorized companies? A. Through special agents?

Q. Yes. A. I do not know the amount of it, but I think it is comparatively small.

Q. You mean by unauthorized companies, companies organized in other States that are not authorized to do business in this State? A. Exactly.

Q. Now, what jurisdiction has the Department of Insurance over fire insurance companies except the duty of seeing that such companies as are authorized to do business are solvent, and that they obey the law as provided with reference to the payment of taxes and assessments, and so forth? A. I should say that constitutes the authority of the Department over the companies.

Q. Is there any provision of law which gives the Department of Insurance or any other department of the State government any supervision of rates fixed by the companies or by Fire Insurance Exchanges? A. There is not.

Q. The State then through none of its departments has any supervision or power whatsoever over Fire Insurance rates? A. No, sir.

Q. They are practically absolutely fixed by the Fire Insurance Exchanges, are they not? A. They are.

Q. How many of those exchanges are there in this State? A. The New York Fire Insurance Exchange is the only exchange I know about in this city.

Q. Does that fix rates for the entire State? A. I don't know about that.

Can you tell me whether or not the Insurance Commissioners of the various States have an organization? A. They have.

Q. And how often does it meet? A. They have an organization which is known as the National Convention of Insurance Commissioners, meeting in annual convention at some designated point.

Q. What is the purpose of this organization? A. Well, the organization convenes and holds meetings, an annual convention rather, for the purpose of coming together upon various points and regulating the business generally. The president of the convention appoints various committees on the subject of insurance, each committee having a chairman, and these committees hold sessions throughout the year, reporting back to the annual convention at its next meeting.

Q. Do you know whether or not this organization has given its attention to the subject of fire insurance? A. Yes; the problems of fire insurance have been given serious consideration by the convention. Commissioner Barry, of Michigan—he was until recently, chairman of the Committee on Fire Insurance Expense—I believe that committee recommended that the commissions should be paid upon the contingent basis rather than upon the flat basis.

Q. Do you know whether or not any other States besides our own State are now investigating or have recently investigated the

question of Fire Insurance? A. Yes, sir; several States have investigated the question.

Q. What States for instance? A. The matter has been taken up in the States of Illinois, Texas, Louisiana, Kansas and Mississippi, as far as I know.

Q. And what States, if any, have it now under investigation? A. In Illinois a commission was appointed by the Governor, this commission holding its first meeting about one year ago. It has, as I understand, taken testimony, examined many witnesses, but has not yet reported. In Texas a State Rating Board is in existence; the law calls upon the companies to formulate and file with the board rates. These rates, if found by the board to be excessive or unjust or discriminatory may be changed, that is, the companies may be called upon to file other rates. In Louisiana, there was a law passed last July, I believe it becomes operative next March, on practically the same lines as the Texas law.

Q. That is, I understand you to say that there is a board created in these States which has power under the law to supervise the rates of insurance fixed by the various companies? A. Well, the law, as I understand it, calls upon the companies first to file the rates; it may be changed by the board by calling on the companies to file different rates where the first rates are found to be excessive. In Kansas the companies file rates with the State Insurance Department, and I understand the State Department there has practically the same power as the boards in Louisiana and Texas.

Q. Do you know whether or not in any of these States in which the subject has been investigated—do you know what remedies have been proposed in the fire insurance field? A. In what specific way?

Q. I withdraw that question for a moment. I understand you to say that this Board of Fire Insurance in Kansas does not fix the rate in the first instance? A. No, sir.

Q. But simply supervises the rates as filed by the insurance companies, and in case they are unjust or inequitable requires the company to file a different rate? A. That is the situation exactly.

Q. The board or the department has the power on its own initiative to reject the rate, has it not, irrespective of whether any complaints or objections are made by the assured, by the persons

who are insured? A. I do not know what the particular statutes may be in the particular States on that point.

Q. It will be brought out later. How many domestic fire insurance companies since 1859 has ceased business in this State? A. 158.

Q. How many mutual fire insurance companies, other than town and county co-operative companies, have ceased business since 1859? A. 31.

Q. How many fire, or fire and marine companies of other States have retired from New York State, not necessarily ceasing business, since 1859? A. 244.

Q. What proportion of these did a marine business, a small proportion? A. Yes, a small proportion I should say.

Q. How many foreign companies, that is companies of other countries, fire, and fire and marine companies, have retired from this State since 1859? A. 37.

Q. Is there any way we can obtain the reason why these companies have ceased business or retired from the State; that is, is there any way to determine why the companies went out of business here, because of failure or because the business became unprofitable? A. I should say about 25 per cent. of these companies that have retired or ceased business did so following the great fires at Chicago, Baltimore and San Francisco; aside from that I should suppose the unprofitable character of the business was largely the reason why the companies retired.

Q. Is the number of companies doing business in this State increasing from year to year, or decreasing? A. Increasing.

Q. Is the number of companies organized within the State, domestic companies, increasing or decreasing? A. I think they are increasing of later years. Years ago we had perhaps more companies than we have at present, but I should say from year to year now the companies are increasing.

Q. About how many companies since 1859 if you know, domestic companies, have failed in this State? A. I don't know, Judge. I just know from the department records the number that have ceased business, but as to the various causes for that I could not give it to you.

Q. You could ascertain, could you, from the records of the

department, how many companies have discontinued business and failed by reason of failure to pay their losses? A. I think the department's records will show that.

Q. I wish you would ascertain that for the Committee both in reference to domestic companies, companies organized in sister States, and foreign companies? A. I will.

Q. Say since 1859? A. Yes, that failed to pay their losses when determined?

Q. Yes. A. I will.

Q. What is the source of your information in regard to the statistics which you have given here, the records of the department? A. The records of the department, and the Superintendent's annual report to the State Legislature.

Q. Will you compile from the records of the department in order that you may give it at a later hearing of the Committee the amount of taxes which domestic companies, companies organized in other States, and foreign companies, have paid in the State of New York say during the past ten years? A. You mean paid to the department or paid to the Comptroller's office?

Q. Paid to the department or the Comptroller's office, if you can ascertain for us? A. I will.

Judge BRUCE: Has any member of the Committee any questions to ask.

By Assemblyman COLNE:

Q. To go back, you were speaking in the beginning of this examination, practically I believe you said that there was a special conflagration fund, and that fund I believe is only available when a conflagration occurs? A. That is right.

Q. Now, what determines a conflagration, and whether that fund is available? A. It is a conflagration so excessive that the claims against the company shall amount to more than its capital stock and guarantee surplus fund.

Q. Then at that point that fund is available? A. That fund is then held to be available.

By Judge BRUCE:

Q. But the companies are not permitted to take advantage of those provisions of the law, that is from sections 130 to 132

inclusive, except under those conditions? A. That is so. No domestic company has ever taken advantage of it that I know of.

By Mr. HURRELL:

Q. You mean no company has taken advantage of it as to going over and segregating this fund, although several have taken advantage of it to create the fund? A. Yes, several companies have created the fund, but no company has taken advantage of the law to segregate the fund.

By Judge BRUCE:

Q. And that refers to foreign, as well as domestic companies, doesn't it? A. The law calls for the creation of such funds only by domestic companies.

Q. And not authorizing the companies organized in sister States or foreign companies? A. No, but I understand there are similiar laws on the statute books of other States, of Wisconsin notably; following the California conflagration I understand one company out there did take advantage of the law.

Q. Yes, but none of our domestic companies in New York State have taken advantage of it? A. No, sir.

By Chairman MERRITT:

Q. Does the Superintendent of Insurance have any discretion on the application for permission to organize a company where the deposit required by law has been made, and proof of membership and so forth given, as to whether he would grant permission for the company to do business in the State? A. If the company has complied with all provisions of law, and has its capital intact and a surplus in its possession amounting to fifty per cent. of the capital, and that fact is shown by a sworn report and examination, I do not assume the Superintendent has any power to withhold his certificate of authority.

Q. The supervision of the department over the business of corporations organized in foreign countries and other States, I take it that any supervision does not extend beyond the business in this State, does it? A. Oh yes, for instance the funds held at Albany

on account of a fire insurance corporation are held, of another company, for the benefit of policy holders throughout the United States; that applies also to the trust funds here. They report back to the Superintendent of Insurance an annual statement of all business transacted in the United States, not in New York State alone.

Q. Is it true then, that when they are examined as to solvency, companies that do business in other states and other countries, that the examiners have to investigate the value of assets of one sort or another wherever they may be located? A. Wherever they may be located; they are very frequently called upon to make appraisals of real estate holdings or bond and mortgage holdings in other States as far west as California.

Q. And other countries? A. Well, not in other countries so far as our fire companies are concerned, because they have no assets practically there except in a few cases, the domestic companies operate in the United States solely; a foreign company coming into New York, the department is not concerned with what it may be abroad; the funds available are simply the funds in the United States in the hands of trustees or departments.

By Mr. HURRELL:

Q. Mr. Gordon, you made a statement in your testimony concerning the supervision of the department over companies of other States; will you indicate to the Committee what the difference is in that supervision, from the supervision that the department exercises over its own companies, letting the department examine the domestic companies by going into their home offices in New York City and going through them, isn't that so? A. That is right, and that is obligatory on the department once in five years, an examination of the affairs of domestic companies.

Q. The supervision of the department over the affairs of a foreign company; will you state to the Committee what the practice of the department is concerning an examination of the other departments, of the home State department of the company? A. The department accepts the certificate of examination of the home State department if there is an accredited representative in charge. If the Superintendent of Insurance of this State has con-

fidence in the State where the company is located the Superintendent in this State accepts the result of his examination.

Q. And will you state to the Committee what recently the commissions of the whole country, what action they have taken on this subject of examination to insure this stringent examination of the companies of foreign States? A. I believe they have created an examination committee, and where examinations are to be made outside or requested to be made outside of the home State the matter is referred to this Committee, I think; isn't it?

Q. Yes. A. That is my idea of it.

Q. That is, if the Commissioner's Committee are dissatisfied with the examination of the home State they have the right to send in examiners from one or more States who are dissatisfied, isn't that true? A. That is what I understand.

Q. So that the supervision in this State, in the department of New York over these various foreign State companies simply consists in the checking up of the examination and the statement of those companies, the statement of the companies and the examination of other departments? A. Largely, yes.

Q. Now, suppose, as Senator Wagner suggests, how does the Commissioner of this State, what is his remedy in the event that he is dissatisfied with the examination of the home State of the non-State company? A. He could examine the corporation himself.

Q. And if they refuse to permit that examination, what follows? A. He cancels their certificate of authority to transact business.

Q. Has there been any such examples within the past year in your department; I am thinking of a Baltimore company; wasn't there one example within the last three months where a foreign company refused the department examiner of New York access to their records; I thought the German of Baltimore; I think there was a Maryland company? A. I don't remember.

Q. Under those circumstances the Superintendent has the right to exclude the company? A. Yes, sir.

Q. And cancel the license to do business here if they refuse the right of that examination? A. Yes, sir.

By Chairman MERRITT:

Q. You spoke, as I understood sometime ago, about the matter of an examination of the companies as to solvency, that they were

permitted to carry investments in the form of commercial paper or notes? A. No———

Q. Or was I mistaken about that? A. No; the capital of every domestic corporation, that is to the minimum capital required by law, which is \$200,000, must be invested in so-called capital securities, and they are composed of stocks or bonds of the United States or of this State, or county bonds, or bonds of an incorporated city in this State, or first loans on bond and mortgage; that list comprises everything that a company may invest its capital in. Its surplus fund beyond its capital may be invested in the stocks or bonds of any solvent corporation — railroad security.

Q. The law does not prescribe beyond so-called capital securities what the company may invest in? A. No, not so long as it is a solvent corporation.

By Mr. HURRELL:

Q. And in this particular the fire insurance companies have more latitude than the life companies? A. Oh, yes.

By Professor WHITNEY:

Q. Is there anything to prevent a fire insurance company from throwing part of its surplus into capital, and part of its capital back into surplus as it pleased, provided it does not go beyond that limit? A. Nothing; they could under the usual conditions do such a thing.

By Chairman MERRITT:

Q. There is no limitation to the amount of insurance that any company may write? A. On any one risk an insurance company may not write in excess of ten per cent. of its capital and surplus. However, what one risk may be is a matter very difficult to determine.

By Mr. HURRELL:

Q. You mean by that, that while the law says the company may not exceed ten per cent. limit on any one risk, substantially they may not take for instance more than ten per cent. on one building, but

attached to that building may be another building, and they take insurance upon that, and the question is what is the risk; that is the question? A. That is it; the question is very hard to determine.

By Chairman MERRITT:

Q. I had in mind the limitation of life insurance as to the aggregate they could write; there is nothing of that sort affecting fire insurance? A. No, sir.

Q. The premium is always paid in advance, I suppose, in all fire insurance transactions? A. Except in some of these mutual corporations where they assess from time to time, but generally speaking it is an advance premium covering the full term of the policy; it may be one year or three years or five years.

By Assemblyman COLNE:

Q. I understood you to say that fire insurance companies must be examined within five years, is that right? A. All domestic fire insurance companies must be examined once in five years.

Q. Does the department find any difficulty in carrying that out? A. Under the present force which we have we can handle the situation all right.

By Judge BRUCE:

Q. And have all the companies in the State been examined within the past five years? A. I should say very nearly, Judge; some of them have been examined three or four times in that period perhaps. Before Mr. Kelsey's term of office and Superintendent Hotchkiss's term, a number of the companies had not been examined for a period of ten or fifteen years, but Mr. Hotchkiss has endeavored to clean up the situation pretty well and he has made examinations of practically all companies that are way back, so we have got them, as far as domestic companies are concerned, I think, examined perhaps down to 1905, about there, and 1904 some of the foreign companies.

Q. How long has the law required the companies to be examined at least once in every five years? A. This law, as I remember, was passed by the last Legislature.

Q. Prior to that time it was within the discretion of the Superintendent? A. It was.

Q. You say that the agents of foreign companies must be licensed to do business in this State? A. Yes, sir.

Q. Is that wholly within the discretion of the Superintendent of Insurance to issue a license to any individual or not? A. The Superintendent issues a license without investigation to an individual appointed by a company to represent it as its agent.

Q. That is, if he has an appointment regularly from the company he makes his application to the Superintendent of Insurance, and upon that a license is issued? A. That is right.

Q. Has he the power under the law to withhold a license if he so chooses? A. I should say not.

Judge BRUCE: It is now one o'clock.

Chairman MERRITT: We will adjourn for one hour, and will meet in the Council Chamber.

Recess until 2 P. M.

AFTER RECESS.

2:00 P. M.

Chairman MERRITT: The Committee will be in order.

Judge BRUCE: I call Mr. Whitney.

ALBERT W. WHITNEY, called as a witness and being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. Where do you reside, Mr. Whitney? A. At the present time Horace, N. J.

Q. And what is your present occupation? A. Actuary of the Legislative Investigating Committee.

Q. Prior to that time what were you engaged in? A. I am connected with the University of California as teacher of mathematics and insurance. I had a leave of absence from that work.

Q. After the great conflagration in San Francisco did you do some work for the Chamber of Commerce of that city in regard

to the fire insurance losses in that conflagration? A. I was employed by the Chamber of Commerce to make an investigation for them, and write a report on the subject of the settlements involved in the San Francisco losses.

Q. What did those fire losses aggregate? A. I have forgotten exactly.

Q. In round numbers? A. It was up towards \$200,000,000, I think, I believe it did not quite reach that point.

Q. Have you had prepared certain statistics which you wish at this time to present to the Committee? A. Yes.

Q. You may now present them and make such statement as you wish in regard to them? A. It was thought desirable to have on record in the report some statistics with regard to the companies which would come under consideration in this investigation.

Q. Referring to the fire insurance companies doing business in this State at the present time? A. Yes, sir. And so Mr. J. H. Woodward, the auditor of the insurance department, was requested to make up these statistics, which he has had done in his department. These statistics are made up from the State reports. The first part here consists of what was shown this morning, is in four parts.

Q. You are referring now to Exhibit A? A. I am referring now to Exhibit A. This consists of four different tables. The first table shows the assets of the companies, and as a matter of fact, it is simply copied exactly from the report,—as a matter of fact, the pages are cut out of the report. That is the first table, assets. The second table is liability and risks, and this is a compilation made from the reports, giving capital, unpaid losses, premium reserve, other liabilities, surplus, gross risk written in 1909, and net risks in force.

Q. Is that of all the companies doing business in this State? A. Of all the companies doing business in this State.

Q. Will you give us the total of each? I withdraw that for the present. Supposing you go on through and describe the other charts until you have completed them, then we will go back and take up the totals of each sheet. A. The third table gives the income and disbursements of the company. The headings are, gross premiums written, net premium income, investment income, contributions to the surplus by stockholders, increase in capital paid in,

losses incurred, expenses incurred, commissions paid, and taxes and fees. The fourth table is a table of ratios. It consists of various ratios, among these figures, all together. I don't know that it is worth while giving those in detail.

By Chairman MERRITT:

Q. What do you cover in that? A. In the ratios?

Q. Yes, what do you mean by that? A. Well, for instance, the first one,——

Q. Is a ratio of what? A. The first one is the ratio of gross premiums written to gross risks written, and the next ratio is a ratio of losses incurred to net risks in force; and the next ratio is the ratio of losses incurred to premium income; and the next ratio is the ratio of expense to premium income; the next ratio is the ratio of commissions paid to premium income; the next is the ratio of taxes and fees to premium income; and the next ratio is the ratio of assets of the company to net risks in force.

By Judge BRUCE:

Q. Is that all? A. And the next one is the ratio of capital and surplus to net risks in force, and the last ratio is the ratio of investment income to their assets. All those ratios are more or less significant in a study of the condition of the business.

Q. In what way? A. Well, for instance, the commission ratio: taking the companies altogether, the average commission paid by all the companies doing business in this State is 21.3 per cent. That means out of their premiums they used 21.3 per cent. in paying commissions. And that is not only given in these tables for the companies altogether, but is given for each separate company, and it shows that some companies operate,—pay much less for commissions than others. For instance, I see on this page one company that pays 15.3 per cent., and another one that pays 41.9 per cent.

Q. That is the average commission? A. The average commission is 21.3 per cent.

Q. The average commission from the company which you referred to as paying 15 per cent., is that its average commission.

or is that a stated commission paid upon all risks written? A. That is the average commission.

Q. Now, we will go back, if you will, to your first page, and give us your aggregates as you go along.

Assemblyman TOOMBS: Do you want the aggregates of the totals of the whole set?

Q. I want to get the aggregates. Tell us the total of the footings of each column on each chart. A. You want them for all the companies, altogether?

Q. Yes. A. Well, I can give you the total admitted assets, or I can give you the sub-items on that. For instance, how much in real estate, how much in bond and mortgages, etc.

Q. Give us first the total, and tell us how much is in real estate and how much is in bond and mortgage? A. The total admitted assets held by these 163 companies are \$512,098,412.90; of that, \$25,513,184.08 is in real estate, and \$43,326,764.56 is in bonds and mortgages. \$358,028,764.16 is in stocks and bonds; \$2,991,510.84 is in collateral loans. \$36,497,381.12 is in cash, in offices, banks and trust companies. \$41,954,195.29 is in premiums uncollected, and \$3,786,612.85 is in miscellaneous assets. That does not include the mutual companies. I can give you the assets of these mutual companies if you would like them. There are altogether seven mutual companies in this State, and their total admitted assets are \$3,344,632.30.

The second table is liabilities and risks. The total for the 163 companies, of capital is \$69,012,066.66; of unpaid losses \$25,452,970.12; premium reserve,—that is to say, under the heading of premium reserve,—is \$233,425,434.98. Their liabilities are \$19,986,074.62. Here is a column called "Surplus to Policyholders." I think this is a mistake, that this column should be headed simply "Surplus;" surplus \$164,221,862.52.

Q. That is \$164,000,000 isn't it? A. \$164,221,862.52. Now, then, those are the liabilities. Now, then, the gross risks written in 1909 were \$357,377,516.11,—I don't think that is right,—the decimal point has not been made plain here.

Q. It must be more than that? A. It may be these are all dollars. There are not any cents in the column of risks in force. I will read it again.

Q. Give us those figures again? A. The gross risks written in 1909 were \$35,737,751,611; and the net risks in force December 31, 1909, \$40,260,882,373.

Q. That is billions? A. Yes.

Q. You are referring in giving this data, to stock companies, are you not? A. Yes, and stock companies and foreign branches.

Q. And are you referring now to the amount of insurance written in the State of New York, or written in the United States? A. In the United States. Now, would you like figures for those mutual companies?

Q. Go on, give us each chart, so we will have the aggregate from each chart? A. For the seven mutual companies that are doing business in the State, the unpaid losses are \$97,872.34; the premium reserve, \$893,753.75; other liabilities \$276,939.86; surplus, \$2,080,588.39; the gross risks written in 1909, \$119,915,203.71; the net risks in force December 31st, 1909, \$168,851,139.58.

The third table, income and disbursements, for the 163 stock and foreign companies, the gross premiums written, \$383,183,141.73; net premium income \$271,442,397.75; investment income, net, \$23,712,026.85; losses incurred, \$133,014,304.88; expenses incurred, \$102,603,570.66; commissions paid, \$57,677,298.94; taxes and fees, \$6,798,996.27. For the mutual companies, gross premiums written, \$1,277,937.97; net premium income, \$974,621.07; net investment income, \$130,255.39; losses incurred, \$829,619.84; expense incurred, \$425,467.29; commissions paid, \$182,431.22; taxes and fees, \$19,807.80. I have already given table "D," the ratios.

Q. You have given us one ratio, namely, the commissions paid to premiums; give us the other ratios you have there? A. That is so. The first ratio is the ratio of gross premiums written to gross risks written in 1909, and that is 1.07.

Q. What does that mean? A. That is a percentage really. It is 1.07 per cent.

Q. What is the significance of it? A. Well, it might very loosely be called an average premium, but it really isn't of very much significance in that way, because the companies not only write yearly business, but term business; and it is really, on that

account, spoiled in its significance as an average premium; its significance is spoiled on that account. It is a mixture of one year business, three year business, five year business, and so on.

Q. That was collected last year, wasn't it? A. Yes, sir.

Q. That shows what was collected last year? A. Yes, sir.

Q. You say average premium, what do you mean by that?

A. You could describe it this way, by saying that the premiums written,—gross premiums written,—were about one per cent. of the gross risks on which they were written. That is to say, in a general way, the premiums were about one per cent. of the risks on which they were written.

Q. Now, will you explain to the Committee the significance of what you call "term insurance?" A. Well, a great deal of the companies' business is renewed year by year, but some of it is written for longer periods, part for three years and part for five-year periods; and the premium is received in advance for the whole term.

Q. Is the premium the same on one-year business, it would be on two, three and five year business; the rate of premium I mean?

A. No, I think always the companies give some reduction on term business.

Q. The shorter term the lower the premium? A. Yes; that is, the lower the premium rate.

Q. And the longer the term, the higher the premium rate?

A. I think in some companies they will write three-year term business for two premiums, and in other cases it is five-year term business for three premium.

Q. Continue? A. Well, shall I go into these other ratios?

Q. Yes, take each one and give us the aggregate? A. The next ratio is the ratio of losses incurred to net risks in force. That is sometimes called "the burning ratio." And the average year for all the companies is .33 of one per cent.

Q. That is .33 of one per cent. of the amount written was lost? A. Yes, that is right.

Q. What is the significance of that? A. That would mean on every hundred dollars at risk, there was 33 cents of loss; on every hundred dollars of risk there was 33 cents of loss.

Q. Proceed? A. The next is the ratio of losses incurred to the premium income; and the figure on that is 49 per cent.

Q. What is the significance of that? A. That means, that of the premiums that are received the companies paid out 49 per cent. in losses.

Q. That is, on every dollar of premium received the amount paid out in losses was 49 cents? A. 49 cents, yes.

Q. And the balance must have gone to the expense account, or the surplus, or dividends? A. Yes. The next ratio,——

Q. On the burning ratio you said it was 33 cents of every hundred dollars at risk? A. Yes.

Q. Proceed? A. The next is what is commonly called the expense ratio, and is the ratio of the expenses incurred to the premium receipts; and for the 163 companies, that is 37.8 per cent.

Q. What is the significance of that? A. It means out of every dollar of premiums that are received 37.8 cents are used in expenses.

Q. Now, does that include commissions? A. That includes commissions; yes.

Q. And office expenses? A. All expenses.

Q. All the expenses of the company? A. Yes. The next ratio is the ratio of the commissions paid to the premiums; and that is 21.3 per cent., which means, out of every dollar of premiums received 21.3 cents is paid out in commissions.

Q. To the agent for securing the business? A. Yes, sir.

Q. Or to the broker? A. Yes, sir. The next is the ratio of taxes and fees to premiums; that is, 2.51 per cent.; that is to say, that out of every dollar that the companies collect in premiums they pay 2.51 cents in taxes and fees.

The next is the ratio of the assets to the net risks in force. That is a sort of index to the stability of the company. You can readily see that if that ratio is very small, the ratio of assets to the net risks in force of the company, other things being equal, the company is weaker than a company which has that ratio large.

Q. And what is that ratio? A. That ratio is 1.27; that is to say that is 1.27 per cent.; that is to say, the per cent. the assets bear to the total amount at risk, at that ratio.

Q. Thus, for every hundred dollars worth of risk, or at risk, the average assets of all the stock companies doing business in the State would be how much? A. Would be 1.27 cents — no, for every hundred dollars it would be \$1.27.

The next ratio is the ratio of capital and surplus to the net amount at risk; that is to say, the capital and surplus is what is over and above the liabilities; and that for these companies altogether, is .58 of one per cent. That is to say, for every hundred dollars at risk the companies have 58 cents capital and surplus. The last one is the ratio of the investment income to the assets and that is 4 63-100 per cent. That is to say, their investment has yielded them on the average 4 63-100 per cent. However, that includes any amounts they must have from sale of securities.

Q. That includes not only the income from securities but the increase? A. Whatever speculative increase there has been.

Q. From securities. Now, all the data from which these ratios are made up appear in this Exhibit A, do they not? That is, in detail? A. Yes.

Q. Which is already in evidence? A. Yes.

Q. Now, you may pass on from that Exhibit A to any other statistics you may have which you wish to offer at this time? A. As in this investigation, sometimes during the investigation, the question is likely to come up as to what the profit has been in the fire insurance business, it seemed worth while to have an inquiry made as to this, and so Mr. Woodward was asked to have these figures worked out which he has done, and would have presented to-day, but he was not able to be here, and as I am familiar with what has been done, I am presenting them for him.

Q. And these were prepared from the statistics on file in the department, were they not? A. Yes; all prepared there. Now, I might first, before giving these figures, explain the method Mr. Woodward used.

Q. Let me first ask that the chart be marked in evidence so we may refer to it in a definite way.

(The exhibit thus identified was marked by the stenographer Exhibit B in evidence.)

A. The method that was used is simply the method of any business man, that any business man would use in finding out what return his business has been yielding. Just to take a few

simple examples: Suppose \$150 was put out at interest, and suppose at the end of the year that amounted to \$162. The method that would be used to find out what rate of interest had been yielded on the investment would be to subtract the \$150, the principal at the beginning of the year, from the \$162, the amount at the end of the year, giving \$12, and to take the ratio of that \$12 to the \$150 at the beginning of the year, which would give as a matter of fact, 8 per cent. That is to say, \$150 put out at interest yields \$12. Therefore, the rate of income realized is 12-150ths of 8 per cent. Now, take another example. Suppose that there is \$100,000 invested in a certain business, and the books of the company or an inventory show at the end of the year that \$5,000 has been drawn out of that business, but that the value of the business at the end of the year, we will say, is \$110,000. Then, to get the earnings of the business through the year it would be the difference between the \$110,000 at the end of the year and the \$100,000 at the beginning of the year, which would be \$10,000. But to that you would have to add the \$5,000 that was drawn out of the business, making a total of \$15,000. To find the rate of income that business is yielding, you would divide that \$15,000 by the \$100,000 at the beginning, giving the 5 per cent. That is exactly the method used in this case. You simply treat the insurance companies just as any other business would be treated, and you find out how much is in the business at the beginning of the year, how much at the end of the year, and how much has been paid out in dividends. Now the only question that comes up here is this question of how you are to decide how much is in the business. That is what we have in this case, called the proprietary interest; the interest of the proprietors in the business. Now, there would be conceivable things that you could do, you could find out what the business would yield as a going business. That would be the market value that the business could be sold for. And the other method would be to liquidate the business and find out then what it would yield. Of course the second value is more conservative. The market value, in general, would be larger than the liquidated value, because it would include the goodwill of the business. The latter figure is the figure we have used, because it is a more conservative figure.

Q. That is the liquidated method? A. Liquidated value. Now, if you were going to liquidate a fire insurance company, what you could get out of it would be the capital and the surplus, but beside that there is another item, what Mr. Gordon referred to this morning as the unearned premium reserve. Now, not all of that would be a part of the proprietary interest, and he referred to the fact that the business could be reinsured for less than the whole unearned premium reserve. As a matter of fact, it is conservative to say it could be reinsured for 70 per cent. There are cases where it could not be reinsured for that amount, but there are other cases where it could be reinsured for less than that, so that if that company were liquidated, the ordinary way would be to simply reinsure its business in some other company, and as it could be reinsured for 70 per cent. of the unearned premiums, that would leave 30 per cent. of the unearned premium as part of the proprietary interests. Consequently in this inquiry the proprietary interests, that is to say the interests of the stockholders in the business at any time, has been taken to be the capital and the surplus, and the 30 per cent. of the unearned premium.

Now, the method used was simply to find out how much that proprietary interest was at the beginning of the year; how much it was at the end of the year; take the difference between those two and that is gain in the proprietary interest. That is, part of the earnings. Now, the rest would be the dividends paid to stockholders during the year, less any possible assessment that had been levied on stockholders. Of course, the thing can go both ways. The stockholders can receive dividends from the company, or there may be assessments levied by the company on the stockholders. So the method used was to take the gain in proprietary interests and add into that the difference between the dividends and the assessments, and to divide that by the proprietary interests at the beginning of the year, and that yielded a ratio which was the rate of income that the business has yielded.

Q. And have you explained in detail this method of computation which you have now given in general terms, in a circular here which I hold in my hand called the earning rate of fire insurance companies? A. Yes.

Q. And that is simply a detailed statement of this formula which you have now given? A. Yes.

Mr. BRUCE: Then I offer that in evidence and ask that it be marked.

(Paper received in evidence an marked Exhibit C.)

Exhibit "C" is as follows:

"THE EARNING RATE OF FIRE INSURANCE COMPANIES.

ALBERT W. WHITNEY.

"No one seems to have made a thorough study of the earning rate of insurance companies; the discussion has usually stopped with the so-called underwriting profit, but to stop at this point is hardly 'to begin.

"In consideration of earnings the underwriting profit is a matter of secondary importance. There is a certain amount of interest, to be sure, in knowing whether the premium receipts have been sufficient in themselves to pay the losses and expenses of the business, but this throws light only upon one side of the subject, and does not give a direct or candid answer to the question. 'What has the business as a whole been earning?'

"In discussion of this question by the companies the underwriting profit has usually been made to occupy the foreground, and if the suggestion was made by an outsider that there was besides this the interest on the companies' securities, he was encouraged to believe that this was a matter with which the public had no concern.

"Now when to go no further, one reflects that a large part of this interest is upon unearned premiums (which, in equity, are the property of the insured) it becomes evident that, in the underwriting profit is a matter of public concern, so, also, is the investment profit. To leave the item of interest out of account in the discussion of fire insurance would be almost as absurd as to leave it out of account in a discussion of banking.

"From one point of view, then, the underwriting profit is not sufficiently inclusive, but from another point of view it is too

inclusive, for if one is sufficiently curious to inquire whether there is anything left of the premium receipts after the losses and expenses have been paid, he will want to go further and ascertain the loss ratio and the expense ratio, separately.

"It is desirable that the public should know what the fire insurance companies have been earning; underwriting profit is a technical term and of interest mainly to the underwriter. As a matter of fact it is conceivable that the business might be worth doing even at an underwriting loss. The fact that a life insurance company has paid out to its policyholders more than it has received in premiums is interesting, but it is not conclusive evidence of good management.

"The relations defining the underwriting profit are as follows:*

"Premiums received = losses paid + expenses paid + underwriting profit; when this equation is divided by "Amount of Premiums Received" it becomes:—

"100% = loss ratio + expense ratio + underwriting profit.

"Coming now, however, to the subject of the real earning rate, we have the equation:—

"Proprietary interest at the beginning of any year, multiplied by $1 + i$ = dividends less assessments + proprietary interest at the beginning of the following year.

"Here i is the rate of income that the business as a whole has produced. The dividends and assessments are taken as payable at the end of the year. Assessments are taken to include all payments by stockholders either into surplus or capital.

"This equation is of the greatest generality; it holds for any business in which capital has been invested.

"The equation takes the form:—

$$P_0 (1 + i) = D_1 + P_1,$$

where P represents proprietary interest and D represents dividends less assessments, and the subscripts refer to the year. (If assessments levied are larger than dividends paid D will be negative.)

*The really correct equation is: Premiums earned = losses incurred + expenses incurred + underwriting profit. Under a business that is fairly stationary we should obtain nearly the same value for underwriting profit from both equations. It is only in the last year by the publishing of the Gain and Loss exhibit that the data for the second equation have become accessible.

"Solved for i this equation gives:—

$$1 = \frac{D_1 + P_i - P_o}{P_o}, \quad (2)$$

or, in words:—

"The rate of income earned = the ratio of (dividends less assessments + gain in proprietary interest) to the (Proprietary interest at the beginning of the year.)

"The difficulties of this subject are entirely centered in the conception of proprietary interest. In the case of railroads the question is very complex because of the physical characteristics of the business. The determination of proprietary interest in the case of railroads is probably the most fundamental and difficult problems before the Inter-State Commerce Commission.

"In the case of fire insurance the problem is comparatively simple for the reason that the investment is so largely in securities, which have an easily ascertainable market value, rather than in plant.

"In considering the question of proprietary interest in the case of fire insurance there are really only two alternatives. the proprietary interest may be taken as the value of the 'going' business, or the value of the business liquidated. In the second case this would be what is left after the business had been reinsured. As the reinsurance could be effected for about 70% of the unearned premiums we may take the proprietary interest to be the capital and surplus plus 30% of the unearned premium reserve. On the other hand the market value of the stock of the company, that is the value of the going business, would cover all of this and something over, which would represent the good will of the policyholders and agents.

"We may write this equation for a series of years:—

$$P_o(1+i) = D_1 + P_1, \quad (3)$$

$$P_1(1+i) = D_2 + P_2,$$

$$P_2(1+i) = D_3 + P_3,$$

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$$P_{n-1}(1+i) = D_n + P_n.$$

If we assume that i is the same in all equations, that is, that the rate of income is the same throughout the term of years (i therefore being a sort of average rate) the equations may be combined into one by the elimination of $P_1, P_2, P_3 \dots P_{n-1}$,

That is:—

$$P_0(1+i)^n = D_1(1+i)^{n-1} + D_2(1+i)^{n-2} + \dots + D_n + P_n. \quad (4)$$

“If these equations go back to the time that the business was started P_0 will represent the amount of money originally invested. The equation may then be read: the present value of all the money invested both at the inception of the business in subsequent assessments, less the present value of all money withdrawn from the business in dividends must equal the present proprietary interest. The difficulty of solving this equation for i if the company has been in operation for some years, might be practically prohibitive. This equation is exactly analogous to the formula that gives the rate of income realized on a bond.

“The difficulty of deciding what to define as proprietary interest is here concentrated in the last term,—the value of business at the present time. If this is taken as the market value, rather than the liquidating value, it is evident, normally, that the rate of income will be increased.

“Market values are, of course, susceptible to all kinds of disturbing influences. In a business, however, in which the market values are consistent and reasonable, the use of market values in equations (1) or (2) as well as equation (4) would, normally, produce a higher rate of interest than the use of liquidating values.

“There is something almost paradoxical about this. One tends to feel that the use of the market value would give a lower earning rate. It would, if in equation (2) it were used in the denominator only; the resolution of the difficulty consists in the fact that the earnings not only consist of the dividends, but also of the increase in the value of the proprietary interest and this would normally be larger if market values were used than if liquidating values were used. This is too big a subject, however, to discuss here.

“I have applied this method in several cases, using for the proprietary interest what I have called the liquidating value, viz., the surplus to policyholders, plus 30% of the reserve.

It may be interesting to see the figures:—

**All Domestic Stock Fire Insurance Companies Doing Business
in New York State During the Years 1908 and 1909.**

BUSINESS OF THE YEAR 1909.

Proprietary interest Dec. 31, 1909.....	\$242,929,413.31
Proprietary interest Dec. 31, 1908.....	214,250,223.19
Gain in proprietary interest.....	\$28,679,190.12
Dividends.....	\$9,809,068.88
Assessments.	2,125,734.50
Dividends less assessments.....	7,683,334.35
Total earnings*	\$36,362,524.50
	\$36,362,524.50
Earning rate = $\frac{\quad}{\$214,250,223.19}$ =	16.98%

"A similar analysis for the companies that were in business in New York during the whole of the years 1905 and 1906 gives for the business of 1906 (the year of the San Francisco fire) a loss rate of 21.67%.

Q. Now, using this formula, you have arrived at the following results which you are about to give, is that correct? A. Yes. Mr. Woodward took the six largest United States companies first. He carried this method out on five different classes, the first class consisting of the six largest United States companies, were Company A, Company B, Company C, Company D, Company E and Company F, and the results for these six companies are:

Company A, 10 9-10 per cent.

Q. 10 9-10 per cent. signifies what? A. Oh, by the way, I forgot to say that this was done for twenty years, from 1890 to 1909 inclusive, and this 10 9-10 per cent. that I mentioned is the average rate of income yielded for these twenty years.

*It will be understood that the fluctuations in market values of securities will tend to produce fluctuations from year to year in the earning rate. It is a question whether for certain purposes a better result might not be attained by the use of book values."

Q. It varied from year to year, did it not? A. Very much; yes.

Q. What was the average in 1909? A. You mean the——

Q. (interrupting) Say in Company A? A. In 1909, Company A earned 14 4-10 per cent.

Q. And what in 1908? A. 31 4-10 per cent.

Q. And the various years comprising the whole twenty years are shown in the schedule which you have before you? A. Yes.

Q. Denominated class A? Yes.

Q. Well, now, proceed with the other: A. I will then call off the different companies: Company A, 10 9-10 per cent.; Company B, 12 8-10 per cent.; Company C, 10 per cent.; Company B, 9 3-10 per cent.; Company E, 10 1-10 per cent.; Company F, 7 6-10 per cent., and the average of all these six companies was 10 1-10 per cent.

Q. And what was the average in Company B for 1909? A. Company B for 1909, 24 8-10 per cent.

Q. And for 1908, Company B? A. 31 per cent.

Q. Company C for 1909? A. 20 3-10 per cent.

Q. And for 1908? A. 28 4-10 per cent.

Q. Company D for 1909? A. 14 9-10 per cent.

Q. And for 1908? A. 22 per cent.

Q. Company E for 1909? A. 16 9-10 per cent.

Q. And for 1908? A. 20 7-10 per cent.

Q. Company F for 1909? A. 0 per cent.

Q. And in 1908? A. 17 4-10 per cent.

Q. And the Companies A, B, C, D and E taken together for 1909? A. Well, all six taken together for 1909 are 18 4-10 per cent.

Q. And for 1908? A. 26 2-10 per cent.; the six largest companies.

Q. Well, proceed Professor, with any other statistics you have. A. I might, while I am on this table, explain three other ratios that have been used.

The second ratio was the ratio of the dividends paid—that is to say, dividends less possible assessments to the proprietary interests at the beginning of the year. I can explain it this way. This first company earned: the average during the last twenty years that it earned was 10 9-10 per cent.

Q. That is, Company A you are speaking of? A. The first company, 10 9-10 per cent. Now, all of that money that it earned it did not take out of the business and distribute in dividends. As a matter of fact, what it took out of the business and distributed in dividends was only 4 6-10 per cent.

Q. That is the average for the whole twenty years? A. For the whole twenty years; that is to say, it took out of the business something less than half of what it earned, leaving over half what it earned in the business, of course, mostly in surplus. It went in to increased surplus, and also partly to increase the reserve, but so far as the stockholders were concerned, in their actual earnings that they received in Company A, they were earning 4 6-10 per cent. Of course you understand——

Q. (interrupting) You mean they were earning that, and that is what they took? A. That is what they took, but at the same time it was being stored up for them in the surplus in the company which could be got out if they wanted to sell their stock—the rest of this that was earned, but there is this to be considered: That that was there at risk. It was at risk of being called on in that conflagration.

Q. Is that all you want in that chart? A. I might give these averages for the six companies. The six companies earned for these twenty years 10 1-10 per cent., and the average amount that they actually distributed in dividends was 5 4-10 per cent., something over half of what they earned they distributed in dividends. The rest of it they kept in the business. That is practically — Oh no, that is not quite all either. Besides that there is a third ratio that was worked out here, which, however, is not significant. It was put in simply for the sake of completeness. It is the ratio of dividends paid to capital.

Now, that is not significant for the reason that it was brought out by Mr. Gordon this morning. Money that is in surplus can be put into capital, and money that is in capital can be thrown into surplus at liberty, provided, of course, the company keeps the minimum capital that is required, and so if you form the ratio of the dividends to the capital you have a ratio that is not significant because the amount of capital is something arbitrary and at the discretion of the company.

Q. What was the average ratio of dividends to capital during the twenty years. Take Company A? A. Company A, it was 13 5-10 per cent.; Company B, 27 3-10 per cent.; Company C, 15 2-10 per cent.; Company D, 17 3-10 per cent.; Company E, 24 5-10 per cent.; Company F, 12 3-10 per cent.

Q. Now, do you mean by that—take E for instance—that they earned 24 5-10 per cent. on their actual capital? A. On their capital, yes.

Q. Is there anything further there? A. Then there is the next ratio; the ratio of the dividends to the market value, where the market value could be secured. It is not particularly significant. In general it is a little bit larger than the ratio of the dividends to the proprietary interests. Now, this was done, these ratios were worked out, for not only the six largest companies, but also for six medium companies. I believe what Mr. Woodward did was to take the average amount of assets that a company—he took an average of the maximum, the largest assets of any company, and the smallest, and then found the six companies that were nearest to that average assets, and the results for these six companies, the six medium companies, coming out as the earnings, were six per cent., 8 9-10 per cent., 6 9-10 per cent., 4 8-10 per cent., 9 2-10 per cent.; 4 6-10 per cent, with an average earning of 6 6-10 per cent., and of that the company distributed exactly half; that is to say, the company distributed in dividends 3 3-10 per cent.

Q. Now take Company G: What were their average earnings in 1909? A. 12 2-10 per cent.

Q. 1908? A. 13 2-10 per cent.

Q. Take Company H: In 1909 their average? A. 20 3-10 per cent.

Q. And in 1908? A. 17 2-10 per cent.

Q. Take Company I in 1909? A. 20 4-10 per cent.

Q. And in 1908? A. 22 7-10 per cent.

Q. And Company J for 1909? A. 19 5-10 per cent.

Q. And for 1908? A. 18 2-10 per cent.

Q. Take Company K in 1909? A. 28 per cent.

Q. And in 1908? A. 20 per cent.

Q. And the same with Company L? A. 10 7-10 per cent. and 14 1-10 per cent.

Q. 10 7-10 per cent. in 1909 and 14 1-10 per cent. in 1908? Now, take the average for the year 1909: What was it? A. 17 8-10 per cent.

Q. And in 1908? A. 17 1-10 per cent.

Q. Well, take the average earnings as to capital. Take Company G for 1909: What was it? A. 5 2-10 per cent.

Q. And 1908? A. Oh, I am giving the average of all the years. Is that what you wanted?

Q. No, I wanted for 1909? A. That was 10 per cent.

Q. And for 1908? A. 10 per cent.

Q. Take Company H for 1909? A. 30 per cent.

Q. And for 1908? A. 30 per cent.

Q. Take Company I for 1909? A. 12 5-10 per cent.

Q. And 1908? A. 10 per cent.

Q. And Company J? A. Company J distributed no dividend that year, so that was zero.

Q. Is that also true in 1908? A. Yes.

Q. Take Company K in 1909? A. 10 per cent.

Q. And in 1908? A. 7 1-2 per cent.

Q. Take Company L in 1909? A. 16 per cent.

Q. And 1908? A. 16 per cent.

Q. Now, the average for 1909 was how much, all of them? A. That was not carried out. Now the third class was the six smallest companies that had been in business during the last twenty years. The six smallest companies —

Q. (Interrupting) Just give the same ratios? A. The averages for the 20 years for these six companies are: 8 per cent.; 6 2-10 per cent.; 5 9-10 per cent.; 4 8-10 per cent.; 2 3-10 per cent.; 2 2-10 per cent., with an average for all six companies of 4 5-10 per cent.

Q. Now give us the averages for each company in 1909, beginning with Company M? A. 16 5-10 per cent., 23 1-10 per cent., 16 8-10 per cent., 14 8-10 per cent., 6 4-10 per cent., 22 1-10 per cent., 16 4-10 per cent.

Q. Now give us for 1908, beginning with Company M? A. 7 8-10 per cent., 23 9-10 per cent., 16 9-10 per cent., 16 4-10 per cent., 14 4-10 per cent., minus 1 2-10 per cent.; average 12 8-10 per cent. I might say for the total of the six companies they earned 4 5-10 per cent and distributed 3 4-10 per cent in dividends.

Q. What was the ratio of the earnings of these companies in the different classes, beginning with Company K, as to capital? A. For the 20 years, the average for the 20 years?

Q. Yes. A. Beginning with Company M, 7 8-10 per cent; Company N, 10 per cent; Company O 4 4-10 per cent; Company P, 9 7-10 per cent; Company Q, 2 9-10 per cent; and Company R, 5 5-10 per cent.

Q. Of course when you refer to "Company" you mean the group? A. No, I mean a company.

Q. Well, a group of companies? A. No, the actual companies.

Q. You mean by a company to designate some particular company? A. Some particular company. I give it a letter instead of giving it a name.

Q. Now, to come to Class 4. A. Class 4 consisted of six companies which had been organized ten or less years ago, and had been in existence for at least five years, I believe.

Q. And applying this formula to which you have referred, what ratios have you arrived at? A. The first company which had been in existence 10 years earned an average of 28 1-2 per cent. The second company, which had been in existence for about eight years, I believe, had earned — well, had lost 2 3-10 per cent. The third company which had been in existence for seven years, or, as a matter of fact, the records — it is impossible to get the results for the first year. Those taken were gains the second year, and this company had actually been in existence eight years. It had earned 5 1-10 per cent. The fourth company had been in existence ten years and lost 2 6-10 per cent. The fifth company had been in existence for four years and earned 8 7-10 per cent.; and the sixth company had been in existence for five years and had lost 1 6-10 per cent.

Q. Take during the last year, 1909, and give us the results in each company? A. The first company, Company S, made 26 9-10 per cent.; Company T, 11 per cent.; Company U, 10 1-2 per cent.; Company V, 13 2-10 per cent.; Company W, 13 4-10 per cent.; and Company X had lost 9 6-10 per cent.

Q. Give us the results for 1908, if you will? A. Company S in 1908 had made 36 7-10 per cent.; Company T had made 1 1-10 per cent.; Company U, 9 4-10 per cent.; Company V, 19 5-10 per cent.; Company W, 1-2 of 1 per cent., and Company X had lost 11 2-10 per cent. I think that is all. There is this fifth class.

Q. Now take Class 5? A. This Class 5 was six foreign companies. There were four English companies chosen and two Continental companies. They were chosen, so far as possible, to be representative. There were four certainly representative English companies and two representative Continental companies, I should say.

Q. And what the ratio obtained by following your formula to these companies? A. The first company gained 9 3-10 per cent.; the second one lost 4 7-10 per cent.; the next one gained 6 7-10 per cent.; the next one gained 5 1-10 per cent.; the next one lost 1 1-10 per cent., and the sixth one lost 14 8-10 per cent.

Q. That is during the twenty years?

A. The last two were not in existence and not doing business in the State during the whole of that time,

Q. But they were doing business in the State since 1896, were they not; one of them, and the other from 1898? A. Yes.

Q. Now, give me the results for these companies for the year 1909? A. The first one 30 2-10 per cent.

Q. Gain? A. Gain. The second 10 2-10 per cent; the third 26 9-10 per cent.; the fourth 23 per cent.; the fifth 2 3-10 per cent.; and the sixth 10 2-10 per cent.

Q. And what were the results for 1908? A. The first 25 9-10 per cent.; the second 15 9-10 per cent.; the third 33 3-10 per cent.; the fourth 27 2-10 per cent.; the fifth 33 9-10 per cent.; and the sixth 11 6-10 per cent. That is all.

Q. The losses which are shown on the whole average of the twenty years is largely due to the San Francisco conflagration, was it not? A. Yes, sir.

Q. Of 1906? A. For the six foreign companies losses in 1906, for the first company was 79.3 per cent., that is a loss; for the second company 303.3 per cent. For the third company 62 per cent.; for the fourth company 77 1-2 per cent.; for the fifth company 142.1 per cent., and for the sixth company 238.8 per cent.

Q. What were the losses in the domestic companies during the year 1906, gain or losses? A. You want the largest?

Q. Yes, begin with the largest companies, that is, what are known as Company A? A. In the six largest companies the losses were during 1906, 3.2 per cent.; in Company B, a gain of 5.7 per

cent.; in Company C, a loss of 49.4 per cent.; in Company D, a loss of 14.5 per cent.; in Company E, a loss of 6.6 per cent.; Company F, a loss of 27.1 per cent., making an average for the six companies of a loss of 14 per cent. in 1906.

Q. Take the next group of companies that you have there, and give us the results of 1906? A. the six smaller companies, the first company lost 30.3 per cent.; the second, 19.2; the third, 23.4; the fourth 33.9; the fifth 30.1; the sixth lost 58.2 with an average of 29.6 per cent.

Q. Loss? A. Loss. The six smallest companies: The first one gained 14.2 per cent.; of course some of the companies were not involved in San Francisco, and some much less than others; that particular company happened to gain during that year 14.2 per cent.; the second company lost 16.4; the third company gained 14.6; the fourth company lost 2.7 per cent.; the fifth company lost 30.6 per cent., and the sixth company lost 30.3, making for the six an average loss of 11.3 per cent. I think that covers the whole thing.

Q. Have you any other statistics that you wish to present at this time? A. That is all, I believe.

Judge BRUCE: I will call Mr. Babb.

GEORGE W. BABB, called as a witness, being duly sworn,
testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Babb? A. City of New York.

Q. What is your business? A. I am the manager of the Northern Assurance Company, for the eastern and southern districts, and its general attorney for the United States.

Q. And what has your experience been in the fire insurance business? A. 39 years in length of time; I have been a clerk in an insurance agency; I have been an insurance agent, a special agent and manager.

Q. And are you a member now of the National Board of Fire Underwriters? A. Yes, sir.

Q. What is the National Board of Fire Underwriters? A. It is an organization composed at the present time of 124 companies,

whose work is almost entirely educational and of a public service character.

Q. How are these members appointed? A. They are elected.

Q. By whom? A. The executive committee, or by the body itself.

Q. You mean the executive committee of each insurance company which is a member? A. No, sir, the executive committee of the National Board, upon application; elect other companies to membership.

Q. And these other companies, each one have a representative in the National Board? A. Yes, sir, and can be represented by one officer.

Q. By any officer of the company? A. Yes, sir.

Q. And how long has this National Board been in existence? A. Since 1866.

Q. Where does it have its offices? A. In this city.

Q. Who is its present president? A. Mr. A. W. Damon, of Springfield.

Q. What other officers has it besides president? A. Vice-president, secretary, treasurer, and executive committee.

Q. How often does it meet? A. The National Board itself has an annual convention, an annual meeting; the affairs of the board are managed by the executive committee between the annual meetings

Q. How is the executive committee made up? A. It is elected annually at the annual meeting, and includes also ex-officio the president and vice-president and secretary and treasurer and ex-presidents.

Q. How many members are there of the executive board? A. Eleven, I believe.

Q. How often do they meet? A. Monthly.

Q. And their meetings are held at the offices of the National Board here in New York? A. They are.

Q. Is this association incorporated? A. No, sir.

Q. Does it include stock companies as well as mutual companies? A. It is composed wholly of stock companies.

Q. Does its constitution preclude the membership by mutual companies? A. I think not, sir.

Q. May a mutual company become a member? A. We have not admitted mutual companies thus far.

Q. Have there ever been any mutual companies admitted? A. I believe not.

Q. Doesn't your constitution forbid or exclude membership to mutual companies; will you look and see? A. Yes, sir; the constitution limits the membership to stock companies.

Q. Was that always a provision of the constitution ever since the formation of the board? I refer you to the copy of the constitution, as printed in your report of 1906; it would appear from the constitution there that any company might belong, would it not? A. Yes, sir.

Q. When was this change made, if you know? A. I can only testify that it was made later than 1906.

Q. I presume the constitution can only be changed at an annual meeting? A. Yes, sir.

Q. Were you present at the annual meeting at which the change was made? A. I think I was.

Q. Can you tell me the reason for the change? A. We believed that the interests of the stock companies and of the mutual companies are not sufficiently identical.

Q. In what respect—you say that the purposes of the board are largely educational? A. Yes.

Q. Why shouldn't the mutuals be educated as well as the stock companies? A. Well, we believe that the views of the stock companies in regard to the various subjects are more homogeneous than they would be if we had a large mutual membership.

Q. Will you elaborate that some, I do not grasp it fully? A. Well, I don't know that I can elaborate it very much more definitely; we felt that the interests of the stock companies were homogeneous, that we looked at the various things that we dealt with from nearer the same point of view, and we did not know what changes in the form of work might come about if we had a large membership come in of companies who operate on an entirely different basis.

Q. Prior to that time were there any mutual companies which belonged to the board? A. Not within my knowledge.

Q. Had there mutual companies made application to become

members of the board? A. I think I remember that the factory mutuals, so-called, made an application, I think probably for a partial membership; without the record I cannot speak more definitely.

Q. Can you give me the reasons for closing the doors permanently, at least so far as the constitution as now constituted is concerned, against the mutual companies? A. Not more than I have stated.

Q. Do you feel that there is any antagonism between the interests of the stock companies and the mutual companies? A. No antagonism; we are competitors, but that does not carry the spirit of antagonism. The form of mutual insurance is legitimate.

Q. Of course the members of the board, the stock companies, are competitors among themselves? A. Certainly.

Q. And if the purpose of the organization is educational, as you stated, Mr. Babb, why not give the mutuals the benefit of this education as well as the stock companies? A. Well, there is none of our work that would either hurt or, so far as I know, especially help them more than others. That was the view that was taken by the membership, that the stock companies constituted a more homogeneous body for dealing with the subjects that came before us, and mutual companies are not subject to the same laws that we are, and that our body would be less homogeneous and our interests would be more homogeneous if we kept it to the stock company.

Q. Was there any feeling expressed or entertained, so far as you know, that the interests of stock companies was opposed to the interests of mutual companies; I do not mean the interest of one stock company against one mutual company, but that the interests of the whole group of stock companies was opposed to the interests of the group of mutual companies? A. Not opposed any more than that they are competitors.

By Chairman MERRITT:

Q. Don't you approach the subject from a different standpoint? A. I do not quite understand.

Q. Don't you approach the subject of fire insurance from different points of view? A. Yes, sir.

Chairman MERRITT: That perhaps was the reason.

By Judge BRUCE:

Q. Does the suggestion made by the Chairman refresh your recollection, Mr. Babb, in any way as to the reason for having this constitutional provision prohibiting the mutual companies from being members of the National Board? A. Why, we did not know but that some of our customers might be approached from a different point of view; the factory mutuals are very strong in their opinions, and we did not see why we should share our work with them and take the risk of a less homogeneous body. They do not share their work with us; they do not furnish us with their literature, and their investigations.

Q. They would if they were members of the board, wouldn't they? A. No, sir.

Q. You could require them to if they were members of the board, coming in, as one of the conditions of membership. I will withdraw that. What is the distinctive difference between the stock companies and the mutual companies? A. The stock companies charge a fixed rate of premium, which they cannot vary during the term of their contract; it is a fixed rate of premium. Mutual companies do not charge a fixed rate of premium; they either charge a sufficiently large premium to carry them through and pay back a dividend such as they are able to at the end of the term of the contract, or they issue a policy for a nominal premium, subject to assessment.

Q. The stock companies engage in the business for the purpose of profits or for dividends, don't they? A. Yes, sir.

Q. The mutual company is in the business for the purpose of mutual protection, is it not, against loss? A. Yes, sir.

Q. And that is the distinctive difference between the two companies, is it not? A. Yes, sir.

Q. And that is the reason why the mutual companies were excluded from the National Board, was it not? A. No, sir.

Q. Wasn't that largely the reason? A. No, sir.

Q. You have a committee on laws and legislation, have you not? A. Yes, sir.

Q. The laws and regulations with reference to stock companies might not operate equally favorable to the laws with reference to mutual companies, isn't that true? A. They operate differently; we are taxed oftentimes and generally when they are not.

Q. Do all stock companies in the United States belong to the National Board? A. No, sir.

Q. What percentage of them belong? A. 124 belong. I don't know what the whole number is.

Q. Can you tell me approximately? A. If you take the whole number, less than half, I should fancy.

Q. How is it supported, the National Board? A. By assessment.

Q. Levied upon the various members? A. In accordance with premium income.

Q. What was it originally intended to do, that is, the National Board; just look at that document? A. I have the document here.

Q. Have you the same one? A. Originally its objects were stated to be as follows: "To establish and maintain, as far as practicable, a system of uniform rates of premium; to gather such information and statistics as may tend to that result, and to promote harmony, correct practices and sound underwriting. To organize and sustain local boards of fire underwriters and to establish and maintain a uniform rate of compensation to agents and brokers. To repress incendiarism and arson by combining in suitable measures for the apprehension, conviction and punishment of criminals guilty of that crime. To devise and give effect to measures for the protection of the common interests, and the promotion of such laws and regulations as will secure stability and solidity to capital employed in the business of fire insurance, and protect it against oppressive, unjust and discriminative legislation." Later it altered the statement of its purposes.

Q. Now, let us look at it first primarily; primarily it was intended, one of its primary functions was that of fixing rates, was it not? A. Yes, sir.

Q. That is, it was an aggregation of fire insurance companies which was to fix uniform rates for all over the United States, was it not? A. Yes, sir.

Q. And also to fix uniform commissions to agents? A. Yes, sir.

Q. And brokers? A. Yes, sir.

Q. When were these two functions abandoned? A. In 1877 it abandoned the fixing of rates; and in 1888 it abandoned jurisdiction over commissions.

Q. What are its present functions? A. Its principal committee perhaps might be called — at any rate, the committee, the work on which it expends the most money is the inspection of fire departments and water works of the cities of the country, and in that connection I will file samples of the reports which are published. Here is one of the city of Buffalo, the city of San Francisco, the city of Seattle, the city of Dallas, the city of New Orleans.

Q. That is, from time to time it publishes reports upon the water works facilities of the various cities of the United States, and villages, does it? A. Yes, sir. These are based upon inspections of engineers, of course. These inspections are made by engineers who are graduates of technical schools and have thereafter had practical experience. The National Board has out about three groups of these inspectors, and in each group is a hydraulic engineer, and mechanical engineer, and one or two civil engineers. These men, by their education and by their training, are expert engineers, and experts, and their work is expert work. Following the receipt of these, we forward a copy, following the printing of these reports a copy is forwarded to the mayor of cities, fire commissioner, if there be such, to the chief of the fire department, and the members of the board send an epitome of the recommendations to their local agents, and we seek to convince the officials in the respective cities that the recommendations are proper, reasonable, and should be carried out.

Q. Now, that is one of the primary functions of the board at the present time; what is another? A. One of the most important works that the National Board or any other organization can do is the improvement of building construction. The great difference in the fire waste of this country in comparison with European countries, being nearly ten times per capita what it is in foreign countries, is due to the difference in construction. It is the one most important thing.

Q. Let me ask you there, that suggests something to my mind, if I may digress; can you tell me in the aggregate what are the fire losses in the United States during the year? A. It has been running about \$250,000,000, without including the forest fires, and fires of that kind.

By Chairman MERRITT:

Q. Structures and their contents? A. Yes, sir.

Q. \$250,000,000? A. Yes, sir, about that.

By Judge BRUCE:

Q. Would I be right if I said that out of every two buildings that are built one is burnt—in other words, out of every two steps ahead that is made in development there is one step back through the destruction by fire? A. Yes, sir, I think fully that, if not more.

Q. Would you go ahead, Mr. Babb, with what you were having to say in regard to the matter of building construction? A. Our board has a committee on building construction, and with the aid of competent experts——

By Chairman MERRITT:

Q. May I ask right here, do you pay those engineers, does the board pay them for their services? A. Yes, sir.

Q. There is no charge anywhere locally? A. No, sir.

Judge BRUCE: I was coming to that.

A. (Continuing.) With the aid of expert architects we prepared what we have termed a model building code for use in cities, and we have thus far printed three editions of it, and have distributed 16,268 copies in the five years ending May, 1910. We sent copies of this to the mayors of cities, to the building departments of cities. We furnish a copy to architects, engineers, contractors, any proper person who applies for them. The result has been that we have had a very large correspondence with the officials of the cities in regard to their building codes whenever they have been revising them. This work grew to such a degree that we have been compelled to hire an expert, and we selected a Columbia College professor who for years had been testing building materials, as our general agent in this particular branch of our work. We had too many calls to send somebody to the various cities to sit without committees revising building codes, and to talk with the city officials, to make it possible for our own men, who are officers of companies, to respond, and we therefore had to either abandon this

work very largely or to engage a competent man to act for us. In Professor Woolson, formerly of Columbia College, we believe that we have a most competent man, and as he has been an instructor he is of course especially qualified to explain —

By Chairman MERRITT:

Q. That is Dr. Ira H. Woolson? A. Yes, sir; he has just been to Syracuse, where he had conferences with the committee on the revision of their code, and with the mayor of Syracuse, and this work is the most valuable work that can possibly be done, because it is the very foundation of a reduced fire waste. Poor construction cannot be controlled. Fire departments cannot prevent destruction of property if it is badly constructed. The fire waste will be most largely affected and reduced by improved construction. As I said in the beginning, the most important factor in Europe which produces the low loss cost there is the better construction. We in this country have been afflicted with construction about as poor as could be devised; but we are now emerging from that, and our more modern buildings are now of very superior construction, and as we rush pretty rapidly in this country in any direction that we take we are very rapidly changing the construction; still, if a building of superior construction be surrounded by masses of the poorest, why then the exposure is so great as to very much weaken the safety of the well-constructed buildings.

By Judge BRUCE:

Q. Mr. Babb, have you more on the subject of statistics, showing the ratio of fire loss in other countries and in our own country? A. Yes.

Q. Will you just give them to us? A. If you will allow me to explain this work a little. In 1905 our committee on statistics felt that it would be very desirable to get into a position where they could make a comparison of the fire waste of the United States and foreign countries, and we appealed to the State department to obtain the information for us, and after some correspondence we induced the State department to instruct our consuls abroad to obtain this information.

Q. Of course, you are speaking now of the United States Department of State? A. Yes, sir. Now, of course, it is apparent that

the board could not have obtained this information by any efforts of its own, and, but for the co-operation of our State department, we could not have obtained it. In the course of time the consuls made their reports and they were published in a consular report. Promptly we received a copy of it, and the general agent of the board and myself extracted from that report or made tabulations from it; under my directions tabulations were made which enabled us to make a comparison of the fire waste in the United States compared with different foreign countries, and with the aggregate. If you will allow me to read this it will be quicker than my attempting to improvise from it.

Q. Do so. A. "Your committee would be disposed this year simply to submit the figures," — that is, our regular figures of fire statistics in cities of twenty thousand population and upwards —

By Chairman MERRITT:

Q. Pardon me, this is a report of the standing committee of the association? A. Yes, and the one that takes in this comparison of the fire waste of our country and foreign countries — "without comment for the study of those interested in them, except that certain facilities have been afforded by the United States government to compare the results with those in foreign cities. A letter was addressed last year to the State department, transmitting a copy of our blank, and asking whether similar statistics of foreign cities could not be obtained through consuls. The government in return forwarded the request to consuls, and the result is given in Special Consular Report No. XXXVIII, entitled 'Insurance in Foreign Countries,' published in 1905. It is to be regretted that our suggestion, that the statistics be for a quinquennial period, could not be complied with, except in one or two instances. In nearly all the cases the statistics were for 1904. Only European cities reported, although the request was also made on consuls in leading cities of South and Central America, and a few in Asia and Africa having characteristics to some extent in common with American cities. The tabulation includes forty-three cities of Europe. Only thirty of these gave the loss, which may be assumed to be the insurance loss, as there appears to be no data of losses not covered by insurance. The remarkably low average is

shown of 61 cents loss per capita, against \$3.10 in the five years' average of 252 American cities." That is, we were five times. "In the European average of 61 cents is included the cities of Moscow and St. Petersburg, Russia, with an average of \$1.32 and \$1.42, respectively, and if we eliminate these two, we should have a still lower average per capita for the remaining 28 cities. Certainly our own per capita loss when thus compared is most striking and alarming, and while, on the one hand, it explains the higher rates of premium which must of necessity be charged here, on the other hand, it points unmistakably to the remedies which should be applied to check the waste—such as improved methods of building construction added to the greatest care and the use of the best known facilities for protection against fire. Taking the number of fires to each 1,000 population in the same cities, we find it is 4.05 in the American cities as against .86 in those of Europe, showing that in point of frequency fires here are far in excess of those abroad, which would seem to indicate a general lack of care in the United States, perhaps on the part of all classes. Practically all fires are confined to the buildings or place of origin in the European cities, as will be seen from the table and the extracts from the reports given below.

"Your committee, however, desired to go further than to present these facts as to fires in cities. The chairman was asked by a prominent underwriter, called upon to address a commercial body, for proofs of the statement so often made that the United States leads all countries in the amount of its fire loss in proportion to the population, and it was found that while all underwriters were convinced of that fact, no one had the figures to substantiate it. Accordingly, the government was again addressed, and on advice of the Bureau of Statistics in Washington, a request was sent by us direct to the consuls, asking for the amount of the total loss in each country, and if that could not be stated, then for the insurance loss for a period of five years. Up to this writing, we can only give the result in the six countries named in the following table." This table includes Austria, Denmark, France, Germany, Italy, Switzerland, and they show an average loss per capita of 33 cents. Now, comparing this with the official reports from the States of Maine, Massachusetts, New Hampshire and Ohio, statistics which

are in a table accompanying this report, we take those States because they had fire records and therefore the data, and the States of Maine, Massachusetts, New Hampshire and Ohio gave an average of \$2.12 per capita against 33 cents loss per capita in the foreign countries named. "Again, the total loss in the United States, as reported in the Chronicle tables and by the Journal of Commerce, was \$866,617,705 for the five years ending with 1905, or an average of \$173,323,541 per annum, which, upon a population basis of 70,000,000, gives a per capita loss of \$2.47." This was five years ago. The population of course is now larger. "Thus it would appear from all of the statistics available that the per capita loss in the United States is appallingly greater than in any other country, whether the comparison be by cities or by countries."

Q. Do you know what the loss was in the State of New York during the years of which you have given the loss in several of the Eastern States and Ohio? A. I do not know. I have not prepared myself with that information.

Q. To what do you attribute, so far as your information and experience goes, the tremendous difference between the losses in our own country and those in foreign countries from fire? A. First the difference in construction; that is by far the most important item.

By Chairman MERRITT:

Q. The method or material, or both? A. Both. In portions of Europe they have the Code Napoleon, under which every tenant is liable to the landlord and to all of his neighbors for any loss that comes to them through any neglect of him; as also the landlord is liable to his tenants and his neighbors for any loss coming to them through neglect of him. Then, in the United States, our people are on the rush, and the point of view is different. In Europe the people are more thrifty, and they are educated to the point of believing—the common belief is that if a man has a fire for which he is responsible he has endangered his neighbors: he is looked upon adversely.

Q. An undesirable citizen? A. An undesirable citizen; in this country if a man has a loss he is slapped on the back and told to do the insurance company.

There is a great difference in the point of view. Our people are extremely liberty-loving people. They don't like restraints. They don't like any ordinances that restrain their personal liberty. They want to fill their buildings up with explosives or combustibles, if it suits their convenience. They do not like to come under restraint. Now, abroad they do come under restraint; they cannot do the things which our people do. In Germany chimneys have to be swept out, and they can only be swept out by licensed chimney sweeps. That is a mere illustration. They cannot have waste in backyards or areaways. Here every man is disposed to have the greatest personal liberty, no matter whether he hazards his own property or his neighbors, or not. Then we started with a country fringed by forests, and timber construction, of course, was natural. It was cheap; it was in the backyards; and for many years we had timber construction as the regular thing. Then our clay fields were exploited, and we began to build of brick, and then with the expansion of business, and the enlargement of stocks, which tend to prevent fires, and the spreading of fires, we came into a period of the worst possible construction. Large areas and high buildings, the floors all perforated with elevator openings, and open well holes; no thought of anything but light and convenience. Now, we are growing away from that, and we are growing toward a better construction; and there is nobody that is doing so much toward promoting that view as the National Board. But the difference in construction, the difference in ordinances, the difference in the care and thrift, and the difference in the point of view are the reasons why in this country our fire losses are shamefully excessive.

Assemblyman COLNE: Has the new era of cement corrected that to some extent?

The WITNESS: Well, that is a little premature; it is not fully tested.

By Chairman MERRITT:

Q. What effect has the system of making a rating based upon the condition of the property had to do with that, pointing out that the saving might be made by those making them? **A.** That affords me an opportunity of saying that in my judgment the most

efficient instrumentality that is making for the reduction of the fire waste is our general system of schedule rating. We may convince a man theoretically that he should have a safer risk, but we cannot induce him to have it. But our system of rating, under which we attempt to discriminate between all the different shades of risks and hazards, and to reward the man with a low rate who has a safe building and keeps a clean house, and to lay a penalty upon a man with bad housekeeping and a defective building, a building in which a fire will spread rapidly; laying the burden of the cost of insurance just as it belongs, so far as we are able to do it with our whole experience, is the greatest instrumentality that is at work to-day in this country towards reducing the fire waste.

By Judge BRUCE:

Q. Why did the National Board abandon that function of making the rates, and fixing commissions? A. That was done, Mr. Bruce, away back before the schedule rating was in use, and it was before my time, and I cannot answer as one who was present at the time, and fully cognizant.

Q. Now, Mr. Babb, to proceed, having spoken now of the work of the National Board with relation to the prevention of fires; the putting out of fires, and with the efficiency of fire departments and water works to the extinguishment of fires, having spoken of its work with relation to the prevention of fires in the construction of buildings, and the passing of ordinances, what other functions does it exercise?

Chairman MERRITT: May I ask a question, Judge, before you go any further?

Judge BRUCE: Yes.

By Chairman MERRITT:

Q. To what extent, if any, is there recognition in making rates of the co-operation of localities? For instance, take a city, if you please, where they have those ordinances and where they have an efficient fire service, and where they have an efficient engineering department in the way of inspection, as I think they do in some places; do the stock companies, as it were, establish an area, having specially favored rate, by comparison with the ordinary aver-

age? A. Yes, sir. I would like to explain how that is done. Each city and each locality has computed its own base rate, and the character of the fire protection, and of the ordinances, or the absence of them, is measured, and is either credited on one side or debited on the other, and makes the starting point of what we term the "base rate" for the town or city.

By **MR. BRUCE**:

Q. Well, the National Board is not concerned in the fixing of that rate now? A. No, sir.

Q. Those are fixed by the local fire exchanges? A. Yes, sir; and other organizations.

Judge **BRUCE**: Mr. Chairman, we will take that subject up fully when we have some member of the fire exchange on the stand.

Chairman **MERRITT**: I was afraid I might forget it when that time came.

Q. Now, Mr. Babb, in addition to the functions you have already mentioned, what other function does the National Board perform? All your work is done through committees, is it not, Mr. Babb? A. Yes, sir.

Q. And you have spoken of those two committees? A. We have another very important committee. That on heating, lighting, etc.; and that committee has charge of all subjects connected with lighting and with heating. And in these days of the great propaganda of the use of electricity, that is a very important committee. In connection with that committee is what we term the Chicago Laboratories. That is the most important testing station in the United States. It belongs to the National Board, and its expenses are largely paid by the National Board. That building is a fine example of fire-proof construction, and is protected by automatic sprinklers; and there we have engineers and experts of a great variety; and there we test all kinds of things which are regarded as hazardous, and also test all kinds of appliances for controlling fires. Electric wires are tested there; fire appliances, fire doors, wired glass doors and windows, fire-proof—what is designed to be fireproof roofs, and all sorts of things which are in themselves hazardous, and all

inventions for controlling fires. An inventor is sent to the Chicago laboratories with his product, his invention, to see if it will stand the test. All men are placed upon equality. And if his article stands the test and receives their approval, why then the underwriters feel that an article of this kind it can be recognized. That is very important work. Work that is scarcely done elsewhere. A very little of it is done in Boston, and Professor Woolson did a little of it at Columbia. They also test all kinds of building materials, and they have rigged up furnaces, and all that is necessary to subject the article to the natural test.

Chairman MERRITT: Do you give certificates?

The WITNESS: Yes, sir.

Q. I presume this committee has charge, as a part of their work, of the improved methods of insulation in wiring? **A.** Yes, sir. They also, when desired by manufacturers, will test the manufactured products in the factories and label it, they have inspectors to do that.

Q. We will now proceed, if you will, Mr. Babb, to other departments of your work. Is this the committee that maintains a corps of inspectors to go about inspecting the insulation of electric wires in new buildings? **A.** No, sir. Except that as an adjunct to the National Board, we have a corps of inspectors of electrical insulation in suburban districts.

Q. That is what I was getting at? **A.** In the suburban district the inspections are carried on through the agency of the National Board.

By Chairman MERRITT:

Q. Do you mean, for instance, that the inspector who goes from Syracuse through Northern New York is an employe of the National Board? **A.** No, sir.

Q. He is an employe of the State Association? **A.** Yes.

Q. Which is another proposition? **A.** That is another proposition.

By Judge BRUCE:

Q. Now, if one of these inspectors refuses to give a certificate, in what does that result in relation to one obtaining insurance? **A.**

Why, it is up to the various insurance companies to treat that refusal as they think is proper.

Q. Is that the matter that is up to the various insurance companies, or up to the various insurance exchanges? A. Why, in this — It is a practice of the companies not to permit the use of electricity unless a certificate has been issued.

Q. This is a practice of fire insurance exchanges, is it not, binding upon the companies? A. I should have to look that up before I could answer that.

Q. Now, what other committees have you? A. The committee on statistics I have already reported on.

Q. Is the report of the inspector with reference to the insulation of a house final? A. Why, if it be believed that a mistake has been made, he can appeal to the organization that employs the inspector.

Q. That is, there is an appeal by the property owner from the report of the inspector to the National Board — or to the local board? A. It would only be to the National Board in respect to suburban inspections.

Q. What does he have to do in order to make such an appeal? A. Communicate with the organization.

Q. Will the making of a communication give him an opportunity to be heard? A. Why, I should say assuredly.

Q. Have you a committee to entertain such appeals? A. This electrical committee would have jurisdiction. May I refresh my mind by asking Mr. Mallalieu whether the electrical committee has jurisdiction?

Mr. MALLALIEU: Yes, sir.

Chairman MERRITT: Do they ever hear appeals?

The WITNESS: If you will let me refresh my mind by asking Mr. Mallalieu —

Mr. MALLALIEU: Yes, they do whenever an appeal comes direct to them; it is heard by the committee.

Q. You adopt Mr. Mallalieu's statement as your answer? A. I adopt his statement as my answer.

Q. Now, let us pass on from that. What other committees have you? A. We have a committee on laws and legislation.

Q. What are the functions of that committee? A. They only

deal with matters that are general to the companies at large. They do not deal with any matters that are strictly local, unless there is a principal involved that is so large as to really make it national. This is a national board, and matters that are purely local are referred to the more local organizations, but a matter that would concern all the companies doing business in the country, that is all the members of the National Board, and is large enough to be considered by the committee; either in opposing legislation which was believed to be unwise, injudicious and unjust, and in favoring legislation which we believe to be suitable, proper and desirable.

Q. Before the legislatures of the various States? A. Yes, sir.

Q. And how does this committee operate? A. They operate usually by the employment of local counsel. More local counsel than counsel here would be, perhaps.

Q. Do they have a regularly retained counsel? A. No, sir.

Q. As occasion arises they retain counsel for the purpose of presenting the views of the committee and the board, do they? A. Yes, sir.

Q. Well, now, have you other committees? A. Yes, sir; we have a committee on incendiarism and arson.

Q. What is the function of that committee? A. To consider applications for the offer of rewards for the detection and conviction of incendiaries.

Q. And what other committees have you, if any? A. We have other committees; we have a committee on clauses and forms, which devises the forms to fit conditions that arise, which are merely recommendatory to the local and district associations. That is for the sake of uniformity, and the action of the National Board is not mandatory, it is merely recommendatory.

Q. Now, what records does your board keep? A. To answer definitely, I shall have to refer to the files.

Q. I presume records of the meetings of the National Board, records of the meetings of the executive committee, and of the other committees, together with such statistics and publications as the board, or committees, put forth from time to time; that would be correct? A. Yes, sir.

Q. What sources of income has the board? A. Its general source of income is by an assessment upon the United States premiums of the companies.

Q. What is its total income during any year, say, take the last preceding year? A. I have that data here.

Q. Give it to me in round numbers, if you will? A. In 1909, \$104,304.27; in 1908, \$113,519.79. Do you wish any more?

Q. Well, give me the preceding year? A. 1907, \$95,848.64.

Q. And this is proportioned how, do you say? A. The last assessment was 1-20th of one per cent. on United States premiums.

Q. Now, are there any other committees that you have not already mentioned, Mr. Babb. I mentioned the committee on clauses and forms. We have a committee on adjustment.

Q. What are the functions of that committee? A. To recommend general practices relating to adjustments.

Q. And to whom are these recommendations made? A. To the executive committee, and out to the National Board itself.

Q. Well, their recommendations go to the various companies, who are members of the board, or are they recommendations to the various local boards of underwriters? A. To the members of the National Board alone, but as a matter of fact, there has been no concrete action by the committee.

Q. You mean, it has not yet made any recommendations? A. I mean that no recommendations have been adopted, and become effective.

Q. Now, what is the relation of the National Board to the local boards of underwriters?

The WITNESS: May I ask Mr. Mallalieu if I have skipped any committee?

Mr. MALLALIEU: Only the Committee on Membership.

The WITNESS: I have skipped the Committee on Finances. That attends to the accounts. And in recommendations for anything out of the routine they pass judgment upon and make reports. The committee on membership is simply a committee to whom an application is referred to report back. That completes the list, I believe, of the committees.

Q. Can you give me — have you there before you the appropriation made for each committee during the year? A. No, sir; but I have the expenditures.

Q. Can you give me them in round numbers, in each department of your work? A. 1909 and 1910, underwriters' laboratories,

\$18,000; salaries, \$10,445.78; legal expenses, \$4,776.35; printing, \$8,935.88; rent and light, \$3,073.70; telephone, telegraph and postage, \$1,139.98; National Fire Protection Association printing, \$1,634.65; National Fire Protection Association hose coupling committee, \$51.25; Underwriters' National Electric Association, \$104.75; consulting engineers, traveling and printing, \$454.55; general traveling expenses, \$285.45; publications, \$280.09; miscellanies and office supplies, \$1,228.91; printing and issuing building code, \$304; exchange on deposits, \$37.47; committee on fire prevention, \$69,071.38.

Q. That includes your entire receipts and expenditures, does it, practically? A. For the work of the board proper. The Bureau of Electrical Inspection in the suburban districts is kept in a separate account.

Q. And who is at the head of that bureau for the suburban districts of New York City? A. The general inspector is Mr. Loomis — no, Mr. Bruen.

Q. What is his first name? A. George E. Bruen.

Q. Who is the chairman of the committee on lighting, heating and patents? A. Mr. U. C. Crosby, and these inspectors are under the immediate direction of that committee. Mr. Bruen is the head of that department and the work is done under his management and supervision. If there should be any question too large for him, why then he would probably consult Mr. Mallalieu, and it would get to the committee on lighting and heating.

Q. Now, what is the National Fire Protection Association, to which you have referred? A. That is an association of engineers from all over the country, insurance engineers, electrical engineers, mechanical engineers — engineers in any line are eligible and they consider technical subjects. In this connection I would like to —

Q. (interrupting) Let me ask first what its relations, if any, to the National Board? A. The National Board publishes its findings, its work, and if you will allow me to present this now at this time, it is apropos.

Q. Yes. A. These are rules and requirements for acetylene gas machines. I will make it short — this is for coal gas producers; this is the national electrical code; the national code again; one is

construction rules and the other installation rules. This is a system of electrical building; providing suggestions for organizing private fire departments; rules and requirements for fire doors and shutters; rules and requirements for private fire department hose; national standard hose couplings and hydrant fittings for public fire service; gravity tanks; grain dryers; gasolene stoves; gasolene vapor and gas lighting machines and systems; gas and gasolene engines; storage and use of fuel oil; chemical fire extinguishers; Here is a pamphlet on the underwriters' laboratories; wired glass; waste cans; ash cans; refuse barrels; systems for storing 250 gallons of fuel oils; sprinkler equipments and skylights; hose for fire department use; hose houses for mill-yards; unlined linen fire hose; valve indicator posts and hydrants; incubators and breeders; kerosene oil burning systems. Protection against lightning; oxy-acetylene heating and welding apparatus; centrifugal fire pump; electrical fire pump; rotary fire pump; steam fire pump; steam pump governors and auxiliary pumps; standard railway cars and operating houses; signaling systems.

(The witness produced pamphlets on the subjects above enumerated.)

Now, these are largely the work of the National Fire Protection Association, and also of consulting engineers, and they are published by the National Board and there has been an annual distribution of these of about 400,000 copies per annum.

Q. Now, who supports the National Fire Protection Association?

A. They assess their own members, and receive, I believe, a contribution from the National Board.

Q. What was that contribution last year, if you recall? A. I think it has been \$1,500 regularly.

Q. Is it in any way, in its operations, under the control of the National Board? A. It is not. We are an element in it.

Q. You say "an element in it." What do you mean by that?

A. I am reminded that we have only one active member in that association.

Q. You mean by that you are one active member, or you have an active member in it? A. Yes, sir.

Q. You mean that you, or the National Board, are an active member, and the other members are made up — A. (inter-

rupting) Well, excuse me, there are other insurance engineers and other insurance organizations that are members.

Mr. Mallalieu: There are probably 75 active members and the National Board is one of the 75.

By Mr. BRUCE:

Q. You adopt the answer, do you? A. Yes, sir.

Q. Now, what is the relation, Mr. Babb, of the National Board to the local boards of underwriters? A. It has not any, sir, except so far as its work can be utilized by the other organizations. It has no control over any of them in any way or manner. It is called upon sometimes by other organizations for the use of its experts and its engineers.

Q. I understand you to say that it has neither supervision nor control over any local board of underwriters? A. Not at all.

Q. Absolutely independent of them? A. Yes, sir.

Q. Is the National Board, in its personnel, made up of individuals, who are also members of the local boards? A. To some degree, yes; to other degrees, no.

Q. In what percentage would you say is that true? A. I do not know, sir.

Q. In a very large percentage or very small percentage? A. Why, I think that the larger percentage of the members of the National Board: Are they members also of the local boards?

Q. Well, is that true of say 80 per cent of the members of the National Board: Are they members also of the local boards?

A. Well, I would rather say 70 per cent of the other associations, we will say, in the State of New York, and that would apply, generally speaking, to the district organizations in New England and in the Middle States and in the South. I have not charge of the Western territory, and I am not informed with very much definiteness.

Q. Well, it then is, to quite a large measure, to a very large measure in fact, an association made up of persons representing companies who are in fact also members of the local boards of underwriters? A. It necessarily follows.

Q. Did I ask you why the National Board abandoned the function of fixing rates and commissions? A. You did, and I replied that was before my time and I am not definitely informed.

Mr. BRUCE: I will then withdraw the question and answer, I will suspend with Mr. Babb at present.

Mr. BABB: I wish to recall you again in the morning at 10 o'clock.

W. E. MALLALIEU, called as a witness, being duly sworn, testified as follows:

By Mr. HURRELL:

Q. You are secretary of the National Board, are you, Mr. Mallalieu? A. My title is general agent of the National Board.

Q. I want to know about these inspectors, whose certificate a man must have before he can secure insurance on his building? The testimony seems to be at the present time that those not under the direction of the New York board in this vicinity, or in this geographical vicinity, are under some suburban board. Just explain that, please, for the record? A. There used to be a surburban underwriters' association, which, when that was disbanded, the National Board assumed to carry on the work of making the electrical inspections. That was ten years ago.

Q. Now, over how much country does the jurisdiction of the National Board extend? A. You refer now to just the electrical inspections that we make?

Q. Yes. A. At the present time or ten years ago?

Q. At the present time. A. I should say in New York State that it took in Westchester, Rockland and Putnam counties; Staten Island, Long Island except the old city line in Brooklyn and except Long Island City. That is all.

Q. And does the National Board have a like duty or function to perform in other parts of the United States? A. No, sir, it does not.

Q. About how many inspectors have you in the counties mentioned? A. I should say ten.

Q. And how long does it take — what is the procedure? Does a man building a house apply to the National Board to have an inspector sent up to inspect his premises? A. He may do that, but usually it is the electrical contractors who installs the electrical wiring or the fixtures.

Q. Now, how much actual supervision does the National Board

or its committee have over these inspectors to see whether or not the requests to have inspectors sent are complied with at once? A. Well, that is a detail which they usually leave to the superintendent of the department.

Q. Of what department? A. Of the electrical inspection department.

Q. That is, he is a man operating under the committee on inspections, is he? A. He operates under the direction or under the supervision, would perhaps be better, of the committee on lighting, heating and patents.

Q. And where is he located, in New York? A. In New York.

Q. And you say the complaints, if any, that any householder may wish to make, should go to the superintendent? A. That is, of course, where it should go. The course that is usually followed is to address a communication to the superintendent. Occasionally they do address the national body. Sometimes they have addressed the general agent direct.

Q. Well, if the inspector gets to the risk, as of course he must, before the certificate is issued, and refuses the certificate, have you any personal knowledge of any appeals coming up from such refusal, to either the superintendent or the committee itself? A. Yes, sir.

Q. Are they of frequent occurrence? A. They are infrequent.

Q. Would a simple letter of complaint to the superintendent secure somebody higher in authority than the mere inspector to go out on that job and see whether the inspector was doing the work or whether he was not doing his work? A. Well, that would depend on the conditions that surrounded the case.

Q. Have you ever had complaints from contractors or householders that you had to see these inspectors, in the sinister sense, before they could get a certificate? A. Well, I should say in ten years perhaps three or four times.

Q. But you are on the alert to see that any such inspector as that does not find employment with your committee, is that true? A. Always.

Q. What would you advise any person building a house, or any electrical contractor to do, if there was any such suggestion as that made to them by any person? A. Well, I do not know. We might

attempt to give him the money, and in that way incriminate the man, or perhaps that would be the course he would pursue.

Q. Now, of course, you would be anxious to know of any such case as that, would you not? A. Yes, sir.

Q. Do you recollect many cases where you had to re-inspect, and where any of your inspectors were overruled upon their decision as to the condition of the piece of property? A. You mean as to the condition of the electric wiring?

Q. Yes, where they have refused to certify? A. Where the local inspector has been overruled?

Q. Yes. A. Yes, sir.

Q. About how frequently does that occur? A. Well, that is very often. All of their work is passed upon by the superintendent or the assistant superintendent. A man making an electrical inspection will report to the office the conditions as he finds them, and he confers with either the superintendent or the assistant superintendent on practically all inspections.

Q. That is where certificates are granted and where they are refused? A. Yes, sir, that is where the first inspection is made, or it may be a second inspection, and frequently the superintendent or the assistant superintendent overrules the inspector who has been in the field and made the inspection.

Q. That is upon his statement of the facts to this superior officer? A. Yes.

Q. Well, suppose they sustain upon his statement of the facts. Do you remember any cases where they have had to review the facts themselves? A. Where who reviewed?

Q. The superior officer who passes on this matter, you say, before a certificate is granted or finally refused? A. Well, there are one or two cases that I recall but my memory is not fresh as to the details of them.

Q. Of course, as I understand this system, it is for the protection of the fire companies in this board that they require that the certificate of the inspector be granted before insurance attaches. That is true, isn't it? A. Will you just repeat the last part of it?

Q. I say the companies belonging to the National Board, before they will issue insurance upon any property, require that the certificate of this electrical inspector, their own inspector, be granted

before that insurance attaches. Is that true? A. No, sir. That does not obtain.

Q. You mean, then, that even in cases where your own inspectors look a building over and report adversely, that a company will still go on the risk? A. I could not tell you anything about that, because the National Board is not concerned with the matter of rates or placing of insurance on rates.

Q. This is not a question of rates. I appreciate that very keenly. I am asking you the question whether, that is, if you know whether the companies that belong to the National Board—whether they will issue any insurance on a piece of property where the National Board's electrical inspector has turned the work down? A. I do not know whether they would or not.

Q. You do not know? A. No.

Q. How long have you been with the National Board? A. Ten years.

Q. As secretary? A. No, sir.

Q. In what capacity? A. With the electrical inspection department for five years.

Q. Do you know what the purpose of the certificate is? A. Yes, sir.

Q. What is it? A. To certify that the work is installed in accordance with the rules and requirements of the National Board of fire underwriters, which is known as the national electrical code.

Q. What is the purpose beyond that? A. To insure safe wiring to the owner or occupant.

Q. You would not say that has any relation to the issuance of insurance at all? A. Well, I do not know that it has.

Q. Don't you know that is the whole purpose of it? A. No, I do not.

Q. You would say it is not the whole purpose of it then? A. Yes, I would.

Q. It is something that the National Board does for the public good, then, and they do not follow the conclusions of their own inspectors? A. The National Board does not take action on the placing of insurance.

Q. I mean the membership composed in the National Board? A. I do not know what the membership does.

Q. Can't you be frank and state the reason of what that whole inspection was so that the National Board can have the benefit of the inspections which they themselves caused to be made? A. That they are getting the benefit of it?

Q. Yes. A. I presume ———

By Mr. COLNE:

Q. (interrupting) Well, would you make an inspection on premises that was not to be insured? A. Yes, sir, we would make an inspection of premises wherever an application was made.

By Mr. BRUCE:

Q. Is this report of your inspector brought to the attention of the individual companies who issue insurance? A. I do not know that it is brought to their attention.

Q. That is the purpose of it, isn't it; to let them know what the risk is, and let them know whether it is hazardous or extra-hazardous, desirable, or undesirable? A. It is primarily to let the owner or occupant of the building know the condition.

Q. Is that your frank statement? A. Yes, sir.

Q. So is this a philanthropic institution formed for the purpose of apprising the owner or occupant of premises of the condition, or is it for the purpose of advising the members, to wit, the various fire insurance companies of the country whether or not the risk is a good one or a bad one? Which one is it? A. Perhaps if I go into a little more detail with you on how these inspections are made, you will understand it.

Q. I wish you would. A. An electrical contractor will file an application for the inspection of electric wiring in a certain premises in the suburban territory. When that application is received at the office of the electrical department of the National Board, the record is made of it, and an inspector is sent to that dwelling or building as soon as possible. He makes an inspection of that building, having in mind the requirements of the national electrical code. He will report the violations, if any, that are found there, to the superintendent or the assistant superintendent, and a letter is then written to the electrical contractor advising him of those violations, and if there are any, and the contractor usually

removes them promptly, and notifies the electrical department that they have been removed, and that he desires a further inspection of it.

Now, when the wiring is approved a certificate approving of the wiring is issued. That is sent to the electrical contractor and the electrical contractor usually hands it to the owner or to the occupant, whoever is paying him for the installation that he has put in.

By the CHAIRMAN:

Q. It being the fact that he has taken a contract to do that work in accordance with the rules of the association, isn't it? A. Electrical contractors usually put that in their contract.

The CHAIRMAN: So I understand.

By Mr. BRUCE:

Q. Supposing he does not comply, then what happens? A. Supposing he does not do what?

Q. Comply. A. With what?

Q. The electrical contractor does not comply with your requirements? A. We would probably, after a reasonable time, notify the owner.

Q. Well then, but if he did not comply? A. Well, I do not suppose there would be anything done with it.

Q. And you would not issue a certificate, would you? A. No, sir.

Q. If he did not have a certificate, then what would happen when he applied for insurance? A. That would be a matter for the suburban insurance exchange which makes rates in the territory.

Q. What usually happens? A. Well, I do not know.

Q. Well, could you make a good guess, if you do not know? Don't you know if he does not have his certificate, he usually does not get his insurance, and if he does not, has usually to pay a higher rate? A. No, sir, I do not, because I have heard they might get insurance—it is possible, probably for them to get insurance whether they have a certificate or whether they have not.

Q. From companies that are members of the National Board? A. That I do not know.

Q. You do not know whether or not a company which is a member of the National Board, if its inspectors refuse to issue a certificate because the owner has refused to comply with its conditions—whether or not they would give him insurance? A. No, sir.

Q. Or charge him a longer rate? A. No, sir.

Q. Well, your education along that line is very incomplete. A. Thank you.

GEORGE W. BABB, recalled as a witness and having been previously duly sworn, testified as follows:

By Mr. BRUCE:

Q. Mr. Babb, I would like to see if you know anything more about this subject than the gentleman who has preceded. I think you do, perhaps. In the event that the owner of property refuses to comply with the requirements of the National Board—that with reference to installation,—insulation or installation—either of heating or of lighting, and a certificate is refused him, what is the policy of the members of the National Board with reference to issuing insurance upon that risk? A. It is my belief that they would regard the risk as too hazardous to issue their policy on it.

By Mr. HURRELL:

Q. Mr. Babb, who would know more about this electrical wiring and the methods of getting from the inspector to the supreme authority that issues these certificates? A. I do not quite catch that.

Q. Who would know besides yourself and the gentleman who preceded, the secretary of this committee; the gentleman just upon the stand; who would know more about the inspectors and the process of getting from the inspectors to the supreme authority in cases where the individual householder fell upon information which he might glean from any source that he was not getting the treatment from the inspectors that he ought to have, and consequently was going to be harmed when it came to getting his insurance? Is there any other official in the board who would be more apt to know about it than the gentleman just put upon the stand? A. Well, the head of that Bureau, Mr. Bruen, comes in contact with

all of these questions a thousand times, probably, where Mr. Mallalieu, possibly might once, and he should know the whole routine or whole practice and all the circumstances that arise in his bureau.

Q. I ask you, I think, a question that was asked the secretary: Are there any companies in the National Board, to your knowledge, that would issue insurance upon a property where this certificate was not granted? A. Why, I think they would if they became convinced through another inspection — an inspection of their own inspector, if they became convinced that the defect was not sufficient to deter them, but I think it is probable that most of the companies would regard the report of the bureau as conclusive that there were defects which there was no excuse for being unremedied, and which would make the risk too hazardous to write.

By Mr. BRUCE:

Q. Do the members of the National Board, individual members, also have a corps of inspectors to go around and inspect the work that the inspectors of the National Board have also inspected? A. No, sir. I spoke of individual companies' inspectors.

Q. Does an individual company who is a member of the National Board also maintain a corps of electrical inspectors? A. No, sir.

Q. They depend and rely upon the reports of the inspectors of the National Board, do they not, Mr. Babb? A. Only in this territory.

Q. I am speaking of this territory. Now, is there a fee for this inspection? A. Yes, sir.

Q. How much is it?

Mr. MALLALIEU: Usually two and one-half dollars. It depends on the size of the installation.

The WITNESS: We attempt, and the intention is, to cover the cost of that particular work.

W. E. MALLALIEU, recalled as a witness, having been previously duly sworn, testified as follows:

By Mr. BRUCE:

Q. Just another question before we adjourn: These complaints, I presume, come more frequently to you from the contractor and the

electrical engineers than they do from the owners, do they not, if there is any disagreement between them and your inspectors?

A. Yes, sir.

Q. That is the owner relies on his contractor and electrical engineer? A. The owner generally had a contract with the electrical contractor, so that the certificate must be obtained by the contractor. That is part of his contract.

And if the certificate is refused, the matter in difference is between your committee and the electrical contractor? A. Between the department and the electrical contractor.

Q. Yes. A. Yes, sir.

Mr. BRUCE: Mr. Chairman, that is all for to-day. I would like very much to examine Mr. Babb to-morrow if he will attend at 10 o'clock.

Chairman Merritt: The meeting stands adjourned until 10 o'clock to-morrow morning, November 23, 1910.

Adjourned to Wednesday, November 23, 1910, at 10 A. M.

TWENTIETH PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, November 23rd, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. ROBERT F. WAGNER.
HON. WILLIAM W. COLNE.
HON. FREDERICK R. TOOMBS.
HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.
ALFRED HURRELL, Esq., *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

GEORGE W. BABB, resumes the stand.

By Judge BRUCE:

Q. Mr. Babb, is there anything which you wish to add to your testimony given yesterday with reference to the constitution and functions of the National Board? A. There are, Mr. Bruce, a few odds and ends.

Q. Will you please state them? A. During my testimony of yesterday you asked me about the National Fire Protection Association, and I stated an impression about it, but I was not as exact as I would now like to be. The control is in the hands of engineers of all kinds of institutions and firms that would be interested in the work.

Q. That is, in what particular line of work do you refer?

A. All kinds of engineering work; if you will let me read just a few names.

Q. As engineering work, that does not have any relation whatsoever to fire or fire protection? A. That does have a relation.

Q. Then it is composed of all kinds of engineers who are in any way engaged in matters relative to fire or fire protection? A. No, sir; for instance, the American Institute of Architects, the American Institute of Electrical Engineers, the American Street & Interurban Railway Association; The American Water Works Association; now, all of these subjects—here is a book of very large membership—the control is very far from being in the hands of engineers who are connected with insurance interests.

Q. I did not refer to that, Mr. Babb. Did you want to be understood as saying that it was composed of engineers generally, no matter what department of engineering they were interested in? A. Yes, sir.

Q. My understanding was that it was composed of engineers that were engaged in work which was either directly or indirectly related in some way to the subject of fire or fire prevention; that would naturally bring in architects, electrical engineers, engineers engaged in the heating of buildings and lighting of buildings, and all those subjects which are more or less related to the question of fire or fire prevention? A. Well, here is the the superintendent of the International Harvester company. What I wish to bring out is that it is not under the control of engineers who are connected with fire insurance interests, but of course those engineers in their own business have features which touch insurance interests.

Q. Now, is there anything else you wish to add? A. In giving you the expenses of the National Board for 1909 and 1910, I omitted \$1,250 expended by the arson committee, for the reason that that is not a running expense of the board. The arson fund is a separate fund contributed by the companies desiring to make such contributions, and rewards on convictions are paid out of that separate fund; that is not a regular expense of the board.

Q. Can you give us any idea of how many convictions you have had or obtained say during the year 1909, or 1908? A. In 1909 there was one conviction.

Q. Speaking of our own State? A. No, sir, this covers the United States. Mr. Mallalieu, have you the data on that?

Mr. MALLALIEU: No, but I have the proceedings.

A. (continuing) Reading from a table in the proceedings, the last proceedings of the board since the establishment of the arson fund in 1873, I understand, there have been 5,975 rewards offered, ranging from \$25 at the minimum to \$1,000 at the maximum; out of 5,975—3,168 were \$250 each. The aggregate of all rewards offered during that time was \$1,982,225. There have been 392 convictions and 277 rewards paid. The 277 rewards paid aggregate \$83,719, the amounts ranged from one at \$50 to five at \$1,000, but the larger number was 129 at \$250 each. The statistical report of 1906 which gave the comparison of the fire experience of this country and countries of Europe, the cities of this country and cities of Europe, was the beginning of the campaign for the reduction of the fire waste. Of course, I do not mean to say that work has not always been done in that direction, but the special campaign of the last few years started from that exhibit. The results of that exhibit were so astonishing, and were perhaps so unexpected, that they have been taken up by a great variety of writers, and every once in a while now I read an article in a magazine or a paper that goes over that ground. When the previous national administration started out upon its work of conservation of natural resources and called attention to the waste of natural resources, we thought that we should call attention to the waste of products of those resources, and through our president we communicated with Mr. Pinchot, and were invited to send a committee to Washington, to attend a convention that was called of the commission, and to which the Governors of States were invited. At that convention we presented a paper on the fire waste in the United States, and in that way stated that the excessive difference between the fire waste of European countries and that in the United States was caused principally by what I stated yesterday. We thought it was our duty to make specific recommendations of what in our judgment would largely diminish the unnecessary and shameful fire waste, and we said: "The committee believes that the present fire waste in this country is an unnecessary national calamity, and that to reduce it it is essential, first, that the public should be brought to understand that property destroyed by fire is gone forever, and is not replaced by the distri-

bution of insurance, which is a tax collected for the purpose; second, that the States severally adopt and enforce a building code which shall require a high type of safe construction, essentially following the code of the National Board of Fire Underwriters; third, that municipalities adopt ordinances governing the use and keeping of explosives, essentially inflammable commodities and other special hazards such as electrical wiring, to store all waste, waste packing material and so forth, in buildings, yards and areaways, and see to the enforcement of such ordinances; fourth, that the States severally establish and support the office of fire marshal, and confer on the fire marshal by law the right to examine under oath and enter premises and to make arrests, making it the duty of such officer to examine into the cause and origin of all fires, and when a crime has been committed require the facts to be submitted to the grand jury or proper indicting body; fifth, that in all cities there be a paid, well-disciplined, non-political fire department, adequately equipped with modern apparatus; sixth, that an adequate water system, with proper distribution and pressure, be installed and maintained. In the larger cities a separate high pressure water system for fire extinguishment is absolutely necessary to diminish the extreme imminence of general conflagration." We were aware, of course, that the national government had no power except that of recommendation, and they did, I believe, adopt a resolution recommending the attention of governors of States and mayors of cities to these recommendations. During this year, September last, there was another meeting of the Conservation Commission at St. Paul, and by request we appeared there and presented another paper on the conservation of utilized resources from destruction by fire.

Q. With practically the same recommendations that you had made in your previous paper? A. Yes, we repeated the recommendations, but we dealt with the subject a little different, as two papers would be likely to do, but essentially the same.

Q. Has the National Board ever prepared what it terms a model fire marshal law? A. We have not.

Q. Has the National Board ever attempted to collate the experience of all its members with reference to losses on various classifications of risks? A. No, sir.

Q. Is there anything further which you wish to add to your testimony given yesterday with relation to the National Board?

A. Yes; the National Board has taken up the question of fireworks ordinances; the number of fires and their destructiveness due to the celebration of holidays and the careless handling and use of fireworks is being taken up by the cities, but we thought that we could accelerate that cause by preparing fireworks ordinances, which we have done, and have distributed to the mayors and authorities of cities recommending their adoption.

Q. Have they been filed in any of the cities of our State? A. Yes, sir, and these ordinances have been adopted in a few cases, and we have had letters indicating that they expected to adopt them later in some other places.

Q. Have they been adopted in the city of New York? A. The city of New York has ordinances; how closely they follow these recommendations I cannot tell you. In December, 1907, we were asked to appear before the National Convention of Insurance Commissioners at Louisville, Kentucky, and state what we had to say on the subject of taxation, which was then specially before that convention. I think that convention was called especially to consider that subject, and inasmuch as Mr. Ralph W. Breckenridge, an eminent lawyer, who, I think, resided in Iowa, and had made some special study of that subject, we appointed him our representative, and he came on and prepared this paper, which was read to some of us before it was presented there, and it contained so much wisdom that I would like to pass this in.

Q. You may file it with the committee. A. Yes; we do not often have the opportunity of passing out nuggets of wisdom like that to a committee of the Legislature.

Q. Is there anything further which you wish to add to your testimony given yesterday as to the National Board? A. I have here two papers which would be germane to your examination of Professor Whitney; whether you will admit them I don't know.

Q. To what do they relate? A. Professor Whitney, in his statistics, presented statistics relating to the earnings of companies on the basis of its proportion of the dividends paid. I have here a paper which I would like to submit to you and file with you, relating to 82 so-called millionaire companies, which shows that all but two out of 82 companies paid less in dividends than their investment income and contributions to capital; the aggregate of the

excess of investment income and contributions to capital over dividends for the 82 companies for the past ten years was \$70,749,109.

Q. Did you prepare the paper? A. No, sir.

Q. Who prepared it? A. The Spectator Company.

Q. Before we would receive it we would like to have an opportunity to examine the man that prepared it and see the basis upon which it was prepared and the information with which it was prepared? A. Yes, sir.

By Assemblyman COLNE:

Q. Has that been filed with the members of the Legislature last year or the year previous? A. This paper?

Q. Yes. A. This paper was recently published by the Spectator Company, compiled —

Q. What is the date? A. November 10th, 1910.

Q. I know they filed something practically along the same lines which you speak of either this year or last year? A. Shall I file it with you for what you consider it worth?

By Judge BRUCE:

Q. No, I think we would like first to examine the gentleman who prepared it and see the basis and method on which it was prepared, in order to form any comparison as to whether or not the method is accurate, and its value as compared with the method that Professor Whitney has pursued. Is there anything further, Mr. Babb? A. No, sir.

Q. Now, you have practically discussed all the functions which are performed by the National Board, have you not? A. I believe so.

Q. Outside of the question of legislation are not all these subjects of as much interest to the mutual companies as they are to the stock companies? A. No, sir, and my mind on the subject of the change of our constitution, my memory has been refreshed by thinking about it, and I would like to make a further answer to a question which you asked me in relation to the reason of making that change. I stated correctly that the interests of the stock companies and of the mutual companies in general respects are not homogeneous; that answer was correct. You then asked me to

explain further, and that whole subject came up to me suddenly; I had not thought of it for years, and I even for the moment had forgotten the change of the constitution.

Q. That change was comparatively recent, was it not? A. 1905, I think the record showed. Now, there are two principal classes — there are many kinds of mutual companies, but there are two principal classes, one, that confine their operations mostly to dwelling-house business and farm business, sometimes writing a small detached store building; and another class is those who write manufacturing risks, prominent among which are the associated factory mutuals.

Q. There is another type, is there not, which are known as pure mutuals, which require a premium and return a dividend? A. That might apply to either of the classes that I have named.

Q. Do you refer simply to the companies which did a small business in insuring homes and residences and also factory mutuals; are those the two that you refer to? A. Yes, sir.

Q. I refer particularly to the pure mutuals; take, for instance, the companies doing business in Massachusetts, the youngest of which is over forty years of age, yes, nearly fifty years of age, which do a pure mutual business, levying a premium, returning a dividend; do you have those in mind? A. I spoke of them when I spoke of those insuring manufacturing risks, prominent among which were the associated factory mutuals.

Q. I am not referring to those, those are known as factory mutuals, which do purely a factory business and no other; in other words, an association of manufacturers who insure one another; those are known as factory mutuals, are they not? A. Yes, sir.

Q. Then there are some small companies who do only a little home business, insuring, as you say, detached dwellings, mostly within a small locality; you refer also to those? A. Yes, sir.

Q. Now, then, there are the large pure mutual companies, particularly I refer to those in Massachusetts which have been doing business for over half a century, the youngest of them, and which levy a premium and return a dividend and do a business extending over the entire State, including all forms of property, farm property, dwellings, factory, mercantile property, manufacturing properties; you had those in mind, had you? A. I do not think that those do so wide a range of business as you speak of.

Q. Yes, I think I am correct about it; I have examined the report of the State of Massachusetts no later than last night, and there are a great many companies in Massachusetts doing a business of that character, some of them carrying as much as nearly \$50,000,000 of insurance, and have been carrying it for fifty years, which levy a premium in advance somewhat of the stock companies and return the dividend to the insured; are you familiar with those companies, Mr. Babb? A. Yes, sir.

Q. Now, having those three classes of companies in mind, just continue? A. Our fire department inspection work and water supply inspection work is confined practically to the cities; and most of the mutuals, the mutuals generally, do not write the city business.

Q. All of those in Massachusetts to which I have referred, all the large ones do a city business, as well as a country business; in fact, most of the risks are in the cities? A. Well, I am a Bostonian and am familiar with the operations of the companies of the class of the Holyoke, the Middlesex, the Quincy, and when I resided there their operations in the cities on mercantile business were very small, and they scarcely wrote any manufacturing business.

Q. Well, continue with your statement? A. Then our building code work relates to the cities, within which the mutual companies, broadly speaking, generally speaking, do not write. Now, we discussed all that without any hostility to those companies, and we determined that we could not tell if we admitted the first mutual company, we could not tell how many others would apply, and as their operations were not on all fours, and were very different from the operations of the then members of the board, we could not tell whether their views as to the continuance of our work would differ from ours; we could not see how they wanted our work, and I do not know now. We did not need them, and we could not see that they needed us; and we exercised our privilege of deciding that we would limit our membership to stock fire insurance companies.

Q. Now, having discussed the question of the National Board thoroughly, there are boards of underwriters, are there not, besides the National Board? A. Yes, sir.

Q. And they are known as local boards of underwriters? A. Yes, sir.

Q. One of which is situated here in our own city, known as the "New York Board of Fire Underwriters?" A. Yes, sir.

Q. Are you a member of that board? A. Yes, sir.

Q. Now, will you take up that subject, Mr. Babb, and give us the benefit of your experience with relation to it. Take it up first, as to its constitution, its membership, its income, and as to its finances. First, let me ask you, is it an incorporated institution? A. It is.

Q. And of what does its membership consist? A. Of the officers of the companies located in the city of New York, and the agents of other companies.

Q. Is its jurisdiction, in its functions, limited to the territory of the city of New York? A. Yes, sir.

Q. How long has it been organized? A. Since 1867.

Q. Who is its president at present? A. Mr. William M. Kremer.

Q. Secretary? A. A. M. Thorburn.

Q. All its work is performed through committees? A. Yes, sir.

Q. Now, will you take up that work and give us a comprehensive view, Mr. Babb, of its purposes and how it carries them out? Are you an officer of it? A. Of the New York Board, no, sir; I am an ex-president.

Q. How long since you were president? A. I was president from May, 1907, to May, 1909. I will take the committees in the order in which they appear on the sheet before me. The finance committee —

Q. Just name first what committees it has? A. Committee on finance, membership, fire patrol, fire patrol relief fund, surveys, electricity, losses and adjustments, arbitration, laws and legislation, origin of fires, patents, water supply and fire department, fire alarm service, and a delegate to the Board of Examiners of the Building Department of the city of New York.

Q. Now, the purpose of the corporation is to inculcate just and equitable principles in the business of insurance, to establish and maintain uniformity among its members, policies and contracts of insurance; to acquire, preserve and disseminate valuable information relative to the business in which it is engaged. That is its purpose, as declared in its constitution? A. Yes.

Q. And this purpose is executed by these various committees?
A. And the board itself, in monthly meetings.

Q. How often does the board meet? A. Monthly.

Q. Has offices here in New York? A. Yes, sir.

Q. Where are they at the present located? A. Mr. Kremer has his office with the German-American Insurance Company.

Q. Where are the offices of the board located? A. At 123 William street.

Q. Now, will you give us briefly, not to take up too much time, or to go too minutely into details, what the functions and operations of each of these committees are? A. The finance committee performs the usual functions of such a committee; passing upon expenditures and requests for expenditure. There are two committees of the board which are permitted to expend \$500 without special authority.

Q. I do not care so much for the details; tell us what the income of the board was for the last year, and how this was raised?

A. The total raised for the year ending April 30, 1910, was \$236,616.18.

Q. Now, how was this raised? A. From assessments on members, based upon the premium income.

Q. And how was it expended; just give us in round numbers the amount devoted to each purpose? A. Do you wish the income in detail?

Q. No, I wish the expenditures; just in round numbers, showing the different objects for which expenditures were made? A. The total expenditures aggregated \$237,256.08; and their classification was for salaries, rent, survey bureau, electrical department, loss department and sundries.

Q. Now, give us the amount expended in each; how much in salaries? A. \$114,152.31. That takes in all the inspectors, and employes of the several inspection departments, and of the loss department. The electrical department has an income practically co-equal with expenditures; and the same with the loss department.

Q. How much was appropriated to the electrical department last year? A. The expenses here stated of the electrical department are \$3,993.17.

Chairman MERRITT: That did not include salaries, of course?

The WITNESS: A. No, the salaries were included in the first item.

Q. Your loss department used something over \$91,000, didn't it? A. The expenditures we received from the loss department were \$95,667.47.

Q. What do you mean by "we received from the loss department?" A. The work of adjustment carried on by the loss department in respect to the payments made to adjusters and to appraisers or for legal expenses in connection with a loss, are proportioned on the individual companies interested in that loss. Now, as that is a bureau of the board, the board pays these bills and receives back whatever it pays out from the individual company. Consequently, the income and expenditures appear on their respective sides.

Q. Now, let us take up the question of membership. How many members has the New York Board? A. I haven't the data before me and I do not remember.

Q. Can you tell me approximately? A. It was approximately eighty, two or three years ago.

Q. Those are stock companies doing business in New York, the board is constituted of officers of companies located here? A. And of the agents of any and all other companies doing business here.

Q. That is, the officers of our domestic companies and the agents of foreign companies, companies organized in sister States or foreign countries? A. Or of the State of New York outside of the city of New York.

Q. Are mutual companies eligible to membership? A. In the New York Board?

Q. Yes. A. I think so.

Q. Are there any mutual companies who are members of the New York Board? A. I think there are one or two lumber mutuals, represented by agents, who are members of the board.

Q. Now, give me in general terms the work of the fire patrol committee? A. The fire patrol committee have charge of the fire patrol service. We have seven stations, 179 men, 21 wagons, 37 horses, 2,051 water proof covers, or other implements for protecting property. On an alarm of fire, the fire patrol company which should go to the particular alarm, in accordance with regulations,

proceeds at once to the fire, the same as the fire department, and they have the right of way, similar to the fire department; and in consequence of that, of course, come under the general direction of the fire department, or the commissioner of the fire department. Their object is to save property and to save life. Oftentimes a fire in the upper part of a building will cause the lower part of the building, in its extinguishment, to be drenched with water. They go in on the floor under a fire, and sometimes on the same floor where there is a fire, but oftentimes they cannot, and they spread these waterproof covers over goods, so that the water coming down will not wet the goods.

Q. How long has the fire patrol been in existence? A. It is provided for in the charter. It was before my time, but I have no reason to suppose——

Q. For a number of years at least? A. Oh, a good many years.

Q. How much was expended by the New York Board last year in its maintenance? A. About \$180,000.

Q. Is it maintained solely by the New York Board? A. No, sir; any company, or companies, whether members of the New York Board or otherwise, are compelled by law to make returns of premium, and to contribute towards its maintenance; but the New York Board has charge of its operations.

Q. Now, take up the fire patrol relief fund. What is that? A. That is a fund of slow accretion, from several sources, for the relief of those who become disabled, or through long service become unable to perform the work.

Q. How is that fund constituted? Is it an assessment levied upon members of the fire patrol, or is it a contribution made by the various insurance companies? A. It comes partly through contributions that have been made by people who have had fires and who believe they have been served by the fire patrol; and it comes partly from the portion of the three per cent. tax on outside business.

Q. This fire patrol service is extended to all parties, whether insured or not? A. Whether insured or not; the fire patrol has no knowledge of whether property is insured or otherwise.

Q. Now, take up your next committee, on surveys, and state generally what the functions of that committee are? A. That

committee has charge of all the inspection work, with the exception of the electrical inspection work, performed in the city, which is a very large item, and of the publication of their survey reports; and they are the committee to whom is referred almost any subject relating to hazards.

Q. Now, the committee on electricity? A. They have charge purely of subjects connected with electric installations.

Q. The committee on losses and adjustments; give us fully the operation and work of that committee? A. The committee on losses and adjustments automatically have charge of a loss when more than three members of the board, not three companies, when more than three members of the board are interested.

Q. How do you differentiate between three members of the board and three companies? A. Because agents are members of the board, and an agent could have a dozen companies, or half a dozen; and he counts as one unit.

Q. Then, when more than three agents are interested in a loss? A. Agents or companies?

Q. Let us assume them to be agents; if three agents are interested in a loss, that goes automatically to the committee on losses and adjustment's jurisdiction? A. No, it has to be more than three.

Q. Well, if more than three agents? A. Yes, sir.

Q. Although they might all represent the same company; or is that possible? A. That is not possible.

Q. Then it would really involve more than three companies, wouldn't it? A. It probably would; it surely would, yes.

Q. Now, from that proceed. I just wanted to make that clear? A. Now, before the establishment of this committee, and this was one of the thoughts in its establishment, every company interested would be liable to send its own adjuster, and there would be a waste of expense by multiplicity, and an annoyance to the property owner having the loss by too large a number afflicting him, and a liability of perhaps delaying the settlement longer on account of the many minds; and we felt that not only would it reduce the expenses which we had, by this method, but that it would appeal, as it were, to the property owners, and we were in hopes that we would make the adjustments in a more dignified manner, and

if possible, in a better manner, and that we could have our work done by the best selection possible to make. Now, a loss occurs and more than three members of the board are interested, and, as I said, it automatically goes into the hands of the committee. They have before them a list of companies interested, and they make a selection of adjusters from an approved list of adjusters, whom they recognize under their own by-laws, which have been approved by the board. They recognize only approved adjusters, and if an adjuster wishes to receive cessions from them, he must apply to be put on that approved list. When put upon the approved list, he is eligible to such cessions as the committee may give him. Now, a loss comes into their hands. They consider the list of companies interested. They consider who has a salaried adjuster, or any of those companies that have such, and they note, in the case of agents, who generally do not have a salaried adjuster, they note what adjuster is preferred by that agent, and with that knowledge, giving due regard to the special abilities of different adjusters, and to the predominance of interest of the separate companies, or certain agents, they select an adjuster who goes on and represents all these members of the board interested; unless some member of the board has exercised his privilege of, within 24 hours, serving notice on the committee that he withdraws from the committee and wishes and intends to represent himself, and adjust in his own way. That is a privilege very seldom exercised.

Q. Now, take the next committee, the committee on arbitration? A. Well, that is a committee to which members of the board, if they have any differences, or any insurance people in the city having any differences, may appeal to settle the difference.

Q. That operates only between members of the board? A. Yes, sir.

Q. Now, your committee on laws and legislation? A. That is a committee that is expected to take notice of legislation affecting insurance companies introduced into the Legislature and to take such action as is proper to oppose or to favor, and to report at the monthly meetings of the board what has transpired.

Q. Do you have regular counsel; has the board regular counsel? A. No, sir.

Q. I presume your next committee, the committee on the origin of fires, is one that has to do with that subject? A. Yes, sir.

Q. That is also true of the committee on patents? A. Yes, sir.

Q. Patents relative to fire apparatus or for the extinguishment or prevention of fires? A. Yes, sir.

Q. And the committee on water supply and fire department have those two subjects? A. They have those two subjects in charge, and represent us before the city authorities in respect to anything that we may wish to urge upon them.

Q. Now, in so far as that relates to the city of New York, take water supply and fire department; what is the function of that committee, and what has its operation been? A. Will you let me tell you some story about their work, and then ask me such questions as you want to?

Q. Yes. A. As an illustration of their work, the destruction of the Parker building on January 10, 1908, attracted a great deal of attention; first, because there was a loss of life; second, because it was esteemed to be a fireproof structure, and the degree of destruction was very unexpected and surprising, and also because there was criticism of the operations of the fire department, and also because the fire department suffered by the bursting of hose to a tremendous degree. Now, the New York Board had an expert engineer study into all the circumstances causing the destruction of the Parker building, and his report is embodied in this paper. (Witness indicates booklet.)

Now, the fact of the bursting of hose was very considerably exploited in the press, and it resulted in the commissioners of accounts concluding to investigate the hose which had been purchased for the fire department of New York, and they appealed to the New York Board of Fire Underwriters to represent them in examining and testing all the hose of the fire department. We accepted that commission from them, and we examined and tested the hose of the fire department, making a specialty of that, going from house to house, and doing nothing else at the time but examining and testing the hose. And the New York Board employed as its servants in making this test of hose the engineers of the National Board, for the reason that the National Board was equipped with the engineers and the New York Board was not. To expedite that work, I remember, we called in from all over the country engineers, and put them right on this hose question in New York. By the re-

quest of the commissioners of accounts, we made our report to the commissioners before it was made to our board, that they might first have the use of it, as it was their work and we were their representatives. (Witness hands up another paper to counsel.)

That shows we were equipped to fill that emergency, and we filled it to their satisfaction; with the result that the regulations regarding the purchase of hose have undergone a change, and now all hose that is delivered to the city is tested before it is accepted; and a representative of the New York Board is always invited to be present, and always is present at those tests. Then, following up that inspection of the hose, but on a line by itself, we had the condition of the entire fire department examined.

Q. That is, with reference to its apparatus, or its personnel? A. Its apparatus; and the results are embodied in that report. (Witness hands another booklet to counsel.)

Q. That is marked Exhibit I-3, is it not? A. Yes.

Q. What is the name of the report? A. "On the Condition of the Fire Department of the City of New York." Now, germane to the subject of the fire department is the question of the fire alarm service. And we became — the members of the New York Board became informed that the fire alarm service was in a horrible condition, and we had an expert make a thorough examination of it; and the report, in extenso, is this exhibit.

Q. Give the name of the report itself? A. The Report of the Committee on Fire Alarm Service Apparatus to the New York Board of Fire Underwriters.

Q. What is the date? A. September, 1905. Now, we have it also in an abridged form, and that shows that this report of our committee, who engaged the services of a very highly-regarded expert, was examined by various others — the expert was Mr. Kemper B. Miller — by other engineers, and the report made by our committee, based upon the investigation by Mr. Miller, was approved.

Now, I will say further in this connection that the Merchants' Association of New York has investigated this question of the fire alarm service, and have confirmed our reports, that it is in a terrible condition; and that it is not feasible to bring it up to a proper standard by repairs, that practically it needs to be taken out and an

entirely new system put in. We have had difficulty in making progress with the city, in taking this matter up, because of the very large expense. I don't need to mention that the city has been on the verge of its debt limit for quite a while; and it finds difficulty in making a large appropriation; and the cost of an entirely new system would be upwards of a million dollars, or in that vicinity.

Q. Now, you have practically covered the principal features of the routine work of the New York Board, haven't you, Mr. Babb?

A. Yes, sir.

Q. That is the principal features? A. Yes, sir.

Q. Now, after a survey is made, an examination of a building about to be erected, or being erected, by your board, a report is made with reference to plans, to construction and installation; do you then issue a certificate? A. Only on the electrical inspection.

Q. Only on the electrical inspection? A. Yes, but our survey committee, following an inspection of a building, issue a survey report, which is sent to each member of the board. That describes the construction of the building, which includes the thickness of the walls, the character of the floors, and all the openings and how protected, and then states the occupancy by floors, and states the condition.

Q. Is that true only with respect to new buildings, or is that true of old buildings as well? A. We are now introducing a new card survey that is a standard. All of the survey departments of the country, or nearly all of them, have united upon the form of a survey report; and the buildings of the city are now generally being reinspected for the purpose of issuing these uniform card reports; but new buildings are inspected at once.

Q. This refers to all buildings that you have just mentioned? A. Yes, sir.

Q. Now, has the New York Board ever attempted to collate the experience of its various members with reference to a classification of risks or losses? A. We have never done so.

Q. The National Board does not exercise any jurisdiction within Greater New York, does it? A. No, sir; it claims the right of inspection of the New York fire department as of the fire departments of other cities.

Q. But the other functions of the National Board, so far as

New York city is concerned, are performed by the New York Board, are they not? A. Yes, sir.

Chairman MERRITT: I would like to ask a question at this point, Judge.

Judge BRUCE: Just one question, and then you may.

Q. Does the New York Board perform any function with reference to the fixing of rates of commission? A. No, sir.

Q. Did they at any time? A. No, sir.

Q. Within your recollection? A. No, sir.

Judge BRUCE: Now, Mr. Chairman, you may question the witness.

By Chairman MERRITT:

Q. When you make this survey of a property, do you make any appraisal of it? A. No, sir. You mean of the value; no, sir.

Q. There is never any appraisal until a loss is claimed, until there is a claim of loss? A. Only, well, the New York Board—. If you will let me explain, I will cover your idea. The only time that any of our organizations in the city of New York — the only time, Mr. Chairman, when any of our organizations in New York make an appraisal of a building prior to a loss, is when some property owner wishes to substitute an agreed valuation for a co-insurance clause, then we do. Now, if we appraised the values of the buildings, we would exhaust, in doing so, in New York city, an important proportion of the premium income, and if we did it in the country at large, why I think it would cost more than the whole premium.

Q. The cost of the survey and appraisal, you mean? A. Appraisal, I speak of.

Q. I would like you to enlarge on that a little for my information. I had assumed that the survey would be one of the very important elements of an appraisal. In what regard would it be so much more expensive to include that as part of the survey? A. Our surveyors are not competent to estimate the value of buildings, and in the case of buildings of size, why only an expert, a building contractor, could do that, and if he were to do it, he would measure it up and figure it out, and the bill of expense would, taking the country at large, be far beyond the premium derived from

insurance. Of course in a large city like this, where the insurable value is large, I would not say it would exceed the premium, because it would not in the case of a very large building. But the reason why — coming, I suppose, to your point — why the insurance companies do not appraise the value of buildings either at the time of their being inspected, for the knowledge of their construction and occupancy, or at some other time, is that it would make the insurance tax upon the public simply intolerable.

Now, there is no necessity for valuing a very large number of buildings for an occasional case when there is a loss. The people who do not have fires do not want to pay that tax on their property, because we have got to have an appraisal when there is a loss, perhaps.

Q. It has been a matter that has been somewhat discussed at various times? A. Yes, I am aware that it is, and that is the reason — a reason — why it is impracticable. It would make a burden of expense that would not be tolerated. It would not be just to assess all of that value or that expense on 999 people who do not have any losses, for the sake of having the information in advance in the case of a loss.

Q. Well, suppose the insured desires to have that done, you have a way of getting at that, do you, and substituting a stipulated value in place of the co-insurance features? A. Some of our organizations permit that.

Q. Is it uniform with the stock companies, or only occasionally? A. I think that some associations have a provision of that kind and perhaps some do not.

By Judge BRUCE:

Q. What proportion of companies, stock companies, doing business in New York, are members of the New York Board of Underwriters? A. Practically all.

Q. What other organizations, Mr. Babb, are there among companies, than the National Board and the New York Board? Simply mention them without going into an explanation of their work? A. Within what territory, Judge Bruce?

Q. Say within the territory of New York State? A. The New York Fire Insurance Exchange, having jurisdiction within the metropolitan district.

Q. Does that include anything outside of Greater New York—when you speak of metropolitan district? A. Not now, now that Jersey is excluded; no, unless possibly a little fringe in Queens county and practically coextensive with Greater New York. The Suburban Fire Insurance Exchange, which operates in the field covered by Queens county, Nassau, Suffolk, Richmond, Westchester, Putnam and Rockland counties, and the New York State Association, which has the balance of the State of New York under its jurisdiction, with the exception of the city of Buffalo, which has an independent local board.

Q. And what is that board known as—the Buffalo local board?

A. The Buffalo Board of Fire Underwriters, I think.

By Assemblyman TOOMBS:

Q. I would like to ask one question: Are any of these exchanges or associations incorporated? A. No, sir.

Q. None of them? A. No, sir. The Buffalo board, I think, may be. I am inclined to think the Buffalo board is.

By Judge BRUCE:

Q. Will you outline for us, Mr. Babb, in a general way, the organizations outside of the State of New York that have jurisdiction, say, over all or a portion of the United States? A. The New England Fire Insurance Exchange has jurisdiction over all the New England States, with the exception of New Hampshire. The Fire Underwriters of the Middle Department have jurisdiction over Pennsylvania, Delaware and Maryland. The Southeastern Underwriters Association has Virginia, North and South Carolina, Georgia, Florida and Alabama. The Western Union has from the western boundaries of New York State and Middle Department to the Rocky Mountains, going as far south as Tennessee, Tennessee being their southern limit. And on the other side of the Rocky Mountains is the Pacific Union.

Q. Now, will you state what board fixes rates and commissions within the metropolitan district? A. The New York Fire Insurance Exchange regulates the commissions to brokers. There is no organization that regulates the commission to agents in New York city.

Q. Then what organization regulates rates within the metropolitan district? A. The New York Fire Insurance Exchange.

Q. And what organization regulates commissions in the suburban district? A. The Suburban Fire Insurance Exchange.

Q. And do they also regulate rates within that district? A. Yes, sir.

Q. And what organization regulates rates and commissions in all other parts of the State except the city of Buffalo? A. The New York State Association regulates rates, and has nothing to do with commissions.

Q. And within the city of Buffalo, what organization performs the function relative to rates and commissions? A. The Buffalo Board as to rates, having nothing to do with commissions.

Q. Now, what board regulates rates — I am speaking now of the divisions of the National Association; that is, all parts of the United States that you mentioned? Take, for instance, in New England? A. They regulate rates and have nothing to do with commissions.

Q. Is that also true of the various other organizations that you have mentioned having jurisdiction over various parts of the United States? A. That statement would be true of the Middle Department; the Southeastern Underwriters Association regulates commissions to agents as well as rates. The Western Union regulates commissions to agents as well as rates. The Pacific Union I am not informed about.

Q. What is the significance of the term "excepted cities," or "excepted city?" A. There is a limited organization of insurance companies which limits the commissions to agents for themselves, and they have excepted territory within which their regulations do not apply, and it does not apply to the large cities, and therefore the large cities have obtained the designation of excepted cities.

Q. But there is no excepted territory with reference to the regulation of rates, is there? A. I think not.

Q. Can you tell me why an exception is made in cities generally as to commissions, but not as to rates, other than simply the desire of the members that it be so? A. Well, there is a difficulty in the cities that does not pertain to the field at large, and they differentiate from each other. There is the brokers question. Now, that is regulated by the New York Fire Insurance Exchange.

Q. What is the function of a broker in the city of New York?

A. He is a solicitor who calls upon the property owner and secures from him the order to place his insurance.

Q. What relation has he to the company issuing the insurance?

A. He carries the risk to the company, supplies the form of policy, obtains the policy and pays the premium to the company thereafter.

Q. Who pays him for his service? A. Well, primarily the company.

Q. That is included in the premium? A. Yes, sir.

Q. Does he bind the company or does he bind the insured? A. He cannot independently bind the company. Under the law of the State, as embodied in the standard form of policy, he is the agent of his assured, of his client.

Q. Are there brokers in the State of New York outside of the metropolitan district? A. There are, but not in large numbers.

Judge BRUCE: That is all, Mr. Babb, thank you very much.

WILLIAM N. BAMENT, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Bament? A. East Orange, New Jersey.

Q. And what is your business? A. General adjuster, Home Insurance Company of New York.

Q. And how long have you occupied that position? A. Six years.

Q. And will you please give us your experience in fire insurance? A. I acted as an insurance clerk, special agent, general agent, adjuster, and general adjuster of fire companies.

Q. Extending over how long a period? A. 34 years.

Q. Now, will you discuss, for the information of the committee, Mr. Bament, the question of the contract of fire insurance from the standpoint of the position which you occupy, and the experience which you have had. I want to make the question very general, and to give you the widest opportunity to discuss that subject from the point of view which I have stated. A. I understood from the gentleman that asked me to come here and talk that he wanted

me to talk on the theory of fire insurance, theory of insurance, and it may not be amiss to very briefly review the subject of insurance, and its origin. I shall be very brief in that respect. It is of ancient origin. It had its inception, of course, in the perils of marine navigation and the merchants had realized the fact that the accommodation of merchants in order to insure the individual lines of merchants' business who might have his ship or cargo destroyed at sea, was a highly desirable object. That is the marine insurance, in its infancy—it dates back, I think, to some time before the Christian era, but it seems to have been lost during the middle ages, and was not, until about the fifteenth century, I think, that modern insurance commenced to revive, and about the sixteenth century, it seems, while marine insurance seems to have been carried on in a legitimate way, still the gambling element appeared in insurance to a remarkable extent. In a diary recently published by Lord Chief Justice Russell, I notice he mentions about circumstances which took place on his trip across the Atlantic, and talks about the wagers the people made among themselves about the most ridiculous things. It seems that he won fourteen pounds himself by guessing who could come nearest to the number of knots the boat would travel in a day; and then, as they approached the shore, they got to wagering as to the color of the hair of the pilot about to arrive; whether he had a moustache or not, how old he was, and whether his age was odd or even, and they reached the climax of absurdity by wagering as to whether he would land with the right or left foot, and when he finally jumped on board with both, all bets were off. I mention that to show that in the sixteenth century all of these ridiculous things would have been the subject of insurance, and I will quote from Mr. Griswold, one of the writers on insurance, to show the extent to which insurance had degenerated in the sixteenth century:

“The commencement of the eighteenth century wagering under the name of assurance was rampant. Companies insured against highwaymen, housebreakers, thieves, lying, death by drinking, divorce, insurance respecting marriage, infant baptism, or any public event. Large sums were paid by underwriters who speculated upon the failure of a young fellow who had undertaken for a wager to go to Lapland and back within a given time and bring

back within a given time two reindeer and two Lapland females, which feat he accomplished. So bad did the situation become that a policy of insurance acquired rather the effect of a box of dice than a contract to secure trade. The practice was restrained somewhat by Act of Parliament, and early in the eighteenth century the Royal Exchange and London Assurance, two great English companies, were chartered to do a marine business. The celebrated decision of Lord Mansfield in the case of gambling policies on the sex of D'Eon was the first legal ruling making an insurable interest the basis of the contract, thus putting an end to wagering policies in England."

This was about the middle of the sixteenth or eighteenth century when Mansfield launched this decision as to the several insurable interests. And in England and on the continent and in the United States an invariable interest has, since that time, been the absolute basis of all legitimate insurance. Insurable interest is very far-reaching in its effect. I will mention, for the information of the committee, the various people who can insure, and who are regarded as having an insurable interest: A mortgagor and mortgagee, a lessor and lessee, a bailor and bailee, a vendor and vendee, a stockholder in corporate property, a common carrier, a warehouseman, heirs and devisees, administrators, executors, trustees, assignees, receivers, sheriff in possession, holder of life estate, and tenant by courtesy or dower; railroad companies for damage by sparks, automobile owners for damage done to others; and, during the time of the coronation of King Edward, vast preparations had been made on the part of merchants and others for the event and insurances were taken out by many merchants on the life of King Edward, and that was regarded as a subject of insurance. I give this as a general comparison; that contingency. The following conditions seem to be necessary for the existence of insurance at all. They are very few: Risk of real loss, which it ought to be beyond the power of either insurers or insured to avert or hasten, and a large number of persons must be left to the latter risk; the casualty contemplated must be likely to follow and fall comparatively on a small number of persons exposed to the risk of it. The possibility of occurrence must be explicit by being designated to end with some approximation and the certainty of the loss appre-

ended must be so considerable when it does occur as to be worth providing against. The cost must be comparatively small, so as to not make it prohibitive. At the present time we have twenty or twenty-five different kinds of insurance. We have fire, life, accident, casualty, employers' liability, lightning, tornado, hailstorm, marine, automobile collision, theft, burglary, plate glass, breach of trust, defects of title, live stock and against both health insurance. Several years ago a prominent underwriter of Chicago seriously contemplated getting up an insurance company for the purpose of insuring families against having twins, but nothing came of it. But this is an absolute fact. I happened to know the gentleman myself: He realized that while one child might be had without discomfort to the family, to have twins was a hardship, and a man ought to have something to compensate him for what he might regard as a misfortune.

Now we have various mediums for the carrying out of these plans for insurance. We have benevolent associations in life companies; we have individual underwriters; we have stock companies and we have mutual companies, and during the Leiter corner in wheat in the city of Chicago at one time—about the time that the corner was about to collapse—I know this to be a fact—Mr. Leiter went to his principal competitor on this side of the market and complained that his insurance manager was cornering the insurance market, and that he could not get any insurance business on his grain, of which he had several million dollars worth. This prominent member of the elevating business in Chicago thereupon says, "I will issue my individual certificate for \$1,000,000," which he did, and trusted to his insurance manager to relieve him of liability as fast as possible. He carried him through, and that is the largest individual application I have ever heard of being taken.

Q. What do you understand by Lloyds? A. Lloyds is an organization which has prevailed in England for centuries. It is a combination of individuals who do what they call underwriting. They take a line up for almost any amount, and each of the gentlemen will sign that he will obligate himself, in the event of losses, to pay a certain proportion; that particular proportion for which he underwrites.

Q. What are the London Lloyds? A. The London Lloyds are

a combination of miscellaneous people in London. They meet at a place called Lloyds in London, and there are various associations. It is not an English combination of any set of individuals. There may be a number of individuals, but they may not write the same risks.

Q. You mean there are several groups? A. Several groups of Lloyds; yes.

Q. Are such companies doing business in this country? A. I understand they are doing quite an extensive business.

Q. I mean, doing it publicly, or are there Lloyds regularly admitted in New York? A. Not that I know of. The underwriting principle of insurance is a mutuality of interest, as expressed in the motto of the seal of the Insurance Department of the State of New York, "Altero Alterius Onero Potate," Bear Ye One Another's Burdens. Now, in the carrying out of the principle of insurance, it has resulted in the getting up of various forms of policies. Prior to the adoption of the New York standard form in 1887, each company had a form of its own, and every time a case would get into litigation and would come out against the company, they would amend their policy form. It was on the face and on the back, in a lot of fine print that nobody could read, and nobody ever did read, and that resulted in the evolution of the form of policy embodied in the New York standard form, which is a very much used form, and this form has been adopted almost verbatim by probably a dozen other States in the country, and all the decisions during the last twenty years have been made under the New York standard policy.

Q. How many States, if you know, have the standard form of policy? A. Connecticut, Iowa, Louisiana, Michigan, New Jersey, North Carolina, North Dakota, Rhode Island, South Dakota, Wisconsin, Maine, Minnesota, New Hampshire. One of the fundamental principles respecting an insurance contract, and, in fact, the prime principle, is that of indemnity. The insurance company seeks, for a comparatively small consideration, to assume a very large risk. Of course, he must have its basis on the absolute good faith of the parties. And, as I said before, they must have an insurable interest in order to make a valid insurance contract, and I think that an insurance contract must of necessity be somewhat

technical in its nature. No insurance company could with safety issue a policy agreeing to indemnify the assured under any and all conditions. For instance, if a building is upon leased ground, and it has only about a month to run, and he has not the privilege of renewal or benefit of removal—he would not remove the building; that is a self-evident fact—it would be entirely too hazardous for anyone to assume to insure such a risk. And they would not want to take a risk upon property which has four or five mortgages upon it unless the ground is exceedingly valuable, or which is encumbered by chattel mortgages, because that indicates a bad financial condition, which no insurance company would care to assume. It is on that ground that these various clauses have been inserted in the standard form of fire insurance policies which is in operation to-day.

Q. Will you discuss, from your point of view, the principle of indemnity as related to the principle of the valued policy? Now, first state the information, in order that the record may be complete, what is a valued policy? A. The first valued policy law, as I recall, was passed by the State of Wisconsin over twenty years ago. In substance that virtually says this: That in case of the total destruction of a building by fire the face of the policy shall be paid or no questions shall be raised as respects value; that is, in the absence of fraud. That was followed by Ohio and by Texas, and a number of other States have valued policy laws as respects value of buildings.

Q. Can you give me the States which have adopted the valued policy law. I understand—am I correct in summarizing what you have said—that under the valued policy law that if a company insures a building for \$10,000, and there is a total loss, it must pay \$10,000? A. In the absence of fraud, and it is totally destroyed.

Q. In other words, it must pay the full amount of the risk that it assumes upon the building in the case of complete destruction—of course, always in the absence of fraud? A. A word of explanation might be necessary along that line, and by telling you the views which have been taken by two different courts, with perhaps a slight modification, it will be of aid: Wisconsin has held that if a building is so far destroyed as to preclude its use for the purposes

for which it was originally intended, it is considered to be a total loss. Ohio, on the contrary, has held that if so much remains of a building as to warrant any prudent man in making repairs or additions thereto, then it is not a total loss in Ohio.

Q. Just give us the States that have the valued policy law? A. Yes, sir. I am taking this from Hints to Insured, published by the Spectator Company in 1900, and I am assuming it is correct: Arkansas, Delaware, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Oregon, South Carolina, Texas, Virginia, Washington, West Virginia and Wisconsin.

Q. Are there any States in which it has been adopted and subsequently repealed? A. I cannot answer.

Q. Do you know of any such States? A. I do not.

By Assemblyman TOOMBS:

Q. In these States do these companies reinsure themselves in other companies; reinsure these claims in other companies to protect themselves in case of loss? A. In these various States?

Q. Yes. A. Oh, yes; reinsurances take place in all these States.

By Judge BRUCE:

Q. That is in vogue in all States, is it not? A. Yes, sir, the practice of reinsurance.

Q. Whether under States having the valued policy law, or those not having the valued policy law? A. Some states reinsurance cannot be effected in some companies, unless the companies are authorized to do business in that State.

Q. Now, will you discuss, as I inquired before — I led you aside in this discussion — this proposition of valued policy in connection with the principle of indemnity? A. I think it is at variance with the fundamental principle of indemnity. I think that while it does not take quite as far back as we were two hundred years ago, still it is a step in that direction, because I think that any variation whatever from the doctrine of strict indemnity approaches the wager idea, and I have thought that a valued policy is in that direction.

Q. What has the experience of companies been with relation to losses in States that have adopted the Valued Policy Law in com-

parison with States which do not have it? A. I have heard the matter discussed by field men for a number of years, but I have never taken the trouble to enlighten the situation, and now it would be somewhat difficult, I think, to reach any definite conclusion, because there are so many things that enter into the laws of a State as to make statistics in that respect somewhat difficult to understand and prove.

Q. Have you personally, from your knowledge and experience in relation to public insurance, favored the Valued Policy Law? A. I do not on principle.

Q. And what are your arguments, or reasons, rather? A. Well, one of my reasons is that it is simply tempting the dishonest man to make money out of the insurance companies, and the public at large, because in the last analysis the public at large pays the bill. I find in practice that even in these valued policy States the valued policy condition is not literally adhered to by the public at large. We very frequently find the man will realize the equities of the situation, notwithstanding his legal rights, whereas the avaricious man and the man who wants to adhere to his legal rights wants to do it, but I regard it as a moral wrong.

Q. Does your company do business in States which have adopted the Valued Policy Law? A. Oh, yes, they do.

Q. Do you know whether or not in this State they cause an appraisal to be made of properties which they insure at the time the insurance is issued? A. They do not. When Texas adopted that Valued Policy Law some twenty years ago, they started off with the idea of appraising property before the fire and charging the assured \$5 for each estimate, but the practice went into disuse, and I guess it has not been heard of for a number of years.

Q. Has your company withdrawn from relations in any States which have adopted the Valued Policy Law? A. They are in all those States at the present time.

Q. Your company? A. Yes.

Q. Has your company advanced the rates in any States solely because of its adoption of the Valued Policy Law? A. I cannot answer you.

Q. Is there anything further that you wish to say from your point of view with reference to the Valued Policy Law? A. I

should say it is a question that might naturally arise as to whether the public is or is not right in insisting, if the company takes the premium on a building at \$10,000, that it ought to pay the loss. That is the stand that the company takes, and a great many people argue that way.

Q. The stand the people take? A. The people take that ground, and the question is whether that is right or not. I think that is incorrect, and will not stand analysis. For instance, where does the claim belong? I think it belongs primarily to the assured himself, because he knows more at the time his policy is written as to the value of his own property than any agent, even an ordinary agent or extraordinary agent can possibly know, without the incurring of a good sized bill of expense, which would ultimately fall upon the insuring public. But I will go further and say that I think after a loss occurs that the insured himself knows more about the value of his properties than even the best adjuster in the United States would know, even after the loss occurs, except by appraisal, and then I think he knows value as much as the appraiser himself knows about the value. He has paid his money for it—and I will not exonerate the agent entirely, because I think he ought to have some little knowledge in regard to those things,—but that the prime responsibility rests upon the assured and the company seems to be the victim to the avarice of the assured and the ignorance of their own agents in the valued policy states.

Q. Has your company in States that have adopted the Valued Policy Law imposed any other and further restrictions upon agents than they have in States which have not adopted that law? A. I do not know that they have.

Q. Do they pay the same commissions to agents in States which have not the Valued Policy Law as they do in States which have it? A. I think they do.

Q. Then, so far as your company is concerned, their methods of operations and their relations to their agents and their payments for commissions are the same in States which do not have the Valued Policy Law as they are in States which have? A. I do not know of any discrimination. I will state that, as is generally known, most losses, in fact the great majority of losses under fire

insurance policies, are partial losses. I would estimate that fully ninety per cent. of losses which occurred under fire insurance policies are partial losses.

Q. Then, if that statement be correct, the Valued Policy Law would, in fact, affect only about ten per cent. of losses? A. Probably; probably that is correct.

Q. Proceed. A. Nothing specially new in the insurance contract has been injected in recent years, except the co-insurance clause, which perhaps is one of the most talked of clauses in connection with fire insurance.

Q. What are we to understand by the co-insurance clause? A. That is what is known as a co-insurance clause, and what is characterized as an eighty per cent. or 100 per cent. average clause. There is a difference in the phraseology of the two co-insurance clauses as originally adopted. The co-insurance clause as originally adopted was a clause which stipulated that the insured, in consideration of the rate that was regarded as the best rate basis of making rates,—that the assured should carry insurance upon the property equal to eighty per cent. of its value, and in event of failure so to do should be a co-insurer, or take the place of the insurance company for any deficiency below that amount, and stand a ratable proportion of the loss.

Q. And it is this form that appears in the standard form of policy as adopted in this State? A. I do not think that phraseology stands. That is the original co-insurance clause. The average clause appears in the standard form, and that is this: That in case of loss the company shall be liable only for that proportion of the loss as the amount of its policy bears to eighty per cent. of the actual cash value of the property. And I also have the average distribution clause. That is a clause which stipulates that in case the policy covers in two or more places, why it shall cover after the fire in proportion as the values in both places are. The Ohio Legislature sometime ago passed what is known as an Anti-Co-Insurance Clause Law, and the Superintendent of Insurance ruled that the average distribution clause was a violation of that clause. Of course, that is only his say so respecting it, and was not a court decision, but insurance companies respected his decision until the manufacturers of Ohio became so active in favor of

having the repeal of that law, because they desired the average distribution clause themselves, that it was repealed, and it is no longer on the statute books of Ohio.

Q. Well, under the co-insurance clause as appears on the standard policy adopted by the State of New York, the owner is insurer of his property to what extent? A. It is owing entirely to the amount of insurance he carries as respects value.

Q. Supposing he carries insurance that exceeds value or equals it? A. Equals it, he gets the full amount of his losses in all instances.

Q. That is if there is a total loss, in the absence of fraud and the building is worth \$10,000, and he carries \$10,000 worth of insurance, he receives \$10,000? A. Absolutely, yes. It might be said as an axiom that if the policy has eighty per cent. co-insurance clause on it, if the physical loss to the property exceeds eighty per cent., he gets all the value of his policy.

Q. Equals or exceeds? A. Equals or exceeds.

Q. But in order to receive the full amount of the loss, in case of total loss, he must carry insurance that equals or exceeds eighty per cent? A. If the property is totally destroyed and he only carries eighty per cent. he will get only \$10,000 in proportion, and that is because of the failure to avail himself of that privilege.

Q. But in the event of partial loss? A. He would get all his money if the insurance equals eighty per cent. and the proportionate part of eighty per cent. in case he does not carry eighty per cent. he is co-insurer.

Q. He is a co-insurer and would get the proportionate part of eighty per cent. in case he does not carry eighty per cent. insurance? A. Absolutely, yes.

By Chairman MERRITT:

Q. I could never understand how that worked out, unless there was an actual appraisal of the property when the policy was made. I have paid premiums on lots of them? A. On buildings, you mean?

Q. Yes. How is a man ever to know whether he is insured? A. That is the point I have endeavored to bring out a little while ago. I think the insured himself knows more about the value of his own

property than anybody else on earth. Therefore the prime responsibility rests with him. He builds the house; he pays the bill. If he buys the house he pays for it. He knows more about the value than anybody else, unless he gets a detailed builder's estimate, of course, of prices and materials and everything else. And material and everything else fluctuates. Sometimes the market is down and you can build a house for less than at any other time, but the insured knows that better than anybody else. It would hardly do to adjust it before a loss, because, of course, it would entail too great an expense. I do not expect that more than two and one half per cent. of the risks burn that are insured. Therefore to go and appraise the property beforehand would be entailing useless expense upon the public. Another factor that has entered into the insurance business in the past few years is the public adjuster idea. He is very numerous in New York City. He is somewhat numerous in Chicago and elsewhere. Iowa he has not yet made his appearance. I do not know whether you would like to have a few words on the subject of the public adjuster or not?

By Judge BRUCE:

Q. Yes, we would. A. I think he made his appearance about 25 years ago, and after a loss occurs he is perhaps the most enterprising individual there is in the business.

Q. More so than the adjuster of the company? A. There is absolutely no comparison so far as enterprise is concerned. I understand that he has his agents and solicitors out at all hours of the night, and the fire alarm no sooner rings than he has someone on the ground to see the assured. He is not there altogether individually; sometimes he is there collectively, and I have heard it said that he gets the insured out of bed and extols the prices of his property and usually gives away that ten per cent., five per cent. or ten per cent. in the contract he signs, and after he has done that, particularly with ignorant people, why another public adjuster will come along and make a better dicker even than the first man, and he will extol prices of his principals and result in coming away with ten per cent. And the result is that both do not work on the case at the same time, and the first adjuster will file a lien with the insurance company upon that ten per cent. contract, and it is very

curiously drawn, virtually making an assignment to that public adjuster of ten per cent. of the amount claimed.

Q. As far as your company is concerned, in how many cases of loss has the assured been represented by a public adjuster? Take during the past year or the previous year, my object being to find out how extensively these public adjusters operate? A. Well, it would be a little difficult to put that in numbers. We have from between twenty-five and thirty thousand losses a year; that is in the country at large.

Q. I was getting at about the percentage? A. In New York City, you mean?

Q. Yes. A. There is hardly any loss of any magnitude that occurs in New York City but what the assured is represented by a public adjuster.

Q. Does the public adjuster who represents the insured of large magnitude represent the small insured, or does a similar small person or adjuster represent the person insured of small magnitude? A. There are a certain calibre of public adjusters who will go on the east side and take a loss which does not amount to more than \$10, and we find a public adjuster on a great many of those east side losses.

Q. Well it is a profession, then, like other professions in which there are some men in it that do not live up to the high ideals and in which there are a great body of them who are men of reputation and live up to the high ideals? A. There are as high grade public adjusters and as exceedingly low grade public adjusters. I think the public adjuster, as such, is a perfectly legitimate business, because there are certain losses where he may be of assistance; in cases where there are bonds in connection with a building or a very complicated set of books, where the physical condition of the property is such as to require advice.

Q. Then the business is not different from that of the average attorney, is it, so far as its personnel goes? A. Except that it is approved by certain people, I think it is saddling upon somebody a considerable expense, and then it is their privilege —

Q. (Interrupting) That is true also of the legal profession and medical profession? I might say is an analogy also? A. I guess that is right, but the main objection I raise against it would be the

fact that they would go to certain ignorant people who cannot understand the language, and secure from them the ten per cent. contract, in duplicate, if you please—two of them—and make twenty per cent., which the poor fellow has to stand, or the insurance companies—I sometimes feel that the insurance companies have to pay the fellow, but that is neither here nor there. On the face of things it falls upon the insured.

Q. Let me tell you that is also true of the legal profession. A ten per cent. fee would be very moderate. So it is not different, at least, from the legal profession. Now, to continue on this subject of public adjusters, can you tell me what brought them into existence. You say it is of recent origin? A. I think it has been in operation probably twenty-five years.

Q. And what led to the men devoting themselves to that particular line of work? Would it refresh your memory if I should suggest perhaps it may have been because the insured felt he was not able to cope with the adjuster of the insurance company in the settlement of a loss, and that, therefore, he wished to call someone in to his aid of equal experience with the adjuster? A. I think that the enterprising public adjuster has convinced the assured of that fact. I think, as I said before, in certain cases the public adjuster is a desirable thing for the assured to have.

Q. Well, now, isn't it a fact that the insured who has a loss finds himself very much handicapped when he comes to adjust his loss and do business with the experienced adjuster of the insurance company? A. I have been frequently——

Q. (Interrupting) And that he is very glad to call to his aid some man who has had wide experience in adjusting losses? A. I have been frequently asked by people coming saying, "Shall I employ a public adjuster?" My answer is, "It is immaterial to us whether you do or do not, because we will treat with a reputable public adjuster with as much grace as we would with you direct." But it is my practice never to send for a physician unless I am sick. If you find you are going to have trouble; if you find you are going to be handicapped, then by all means send for a public adjuster if you think he would be a benefit to you, but I do not think I would rush in and incur that expense unless I found a necessity for it.

Q. Oftentimes two gentlemen come to make a contract, one

represented by his attorney and the other not represented by an attorney at all, and the one not represented by an attorney feels he would like to have an attorney present in order that he may make no serious mistakes, and he doesn't care to first wait until he is in danger; he doesn't care whether he is sick or in danger; he does not know whether he is sick or in danger and he sends for an attorney to have him there to advise him. Isn't that also true of this question of adjustment. A poor man has a loss and the company sends around a competent adjuster, and, of course, a clever adjuster, and he may not know what his rights are. I do not suppose that one man out of a thousand ever reads his policy, and consequently he may feel that he is better advised as to his rights in the event he had a man there who had large experience in adjusting. Don't you think that may perhaps be the motive that actuates him? A. I have no doubt about the argument presented by the public adjuster, and there are some very valid arguments presented from time to time in many cases. That is not the objectionable feature.

Q. Don't you think he is a very useful man in that he has the knowledge, and performs a valuable service? A. I quite agree, although I would have no objection to telling the lawyers also that there are times when there are objections.

Q. And in his absence what would you suggest? Suppose he were eliminated or would you advise his elimination? A. I am afraid that he has come to stay, and we will have to take the good with the bad so long as he is here.

Q. Like everything else? A. Yes.

Q. Now, proceed, Mr. Bament. I might go further and inquire whether or not it is your judgment that the public adjuster should be licensed the same as insurance brokers are, or insurance agents, or even as attorneys, or men practicing other professions? A. I do not know whether any greater burden should be imposed upon them than upon any other class of adjusters. I might mention, for your information, that as expressed by Mr. Babb, the adjuster of losses in New York City, the larger losses, that is where over three agents are interested, are taken care of by the board of adjustment of the New York Board of Fire Underwriters for the purpose of simplifying matters, and the adjustment bureau idea on a some-

what different basis is in vogue in other sections of the country. We have the general adjustment bureau in New York. We have the Western Adjustment Inspection Company, taking jurisdiction over the Northwest, and the Southern Adjustment Bureau taking jurisdiction in the South. The bureau idea of adjustment, for the purpose of handling the larger offices, and simplifying matters has come into general use. The Western Adjustment Bureau was organized in 1885; the General Adjustment Bureau in 1906, and the Southern is less than a year. In former times, when a large loss would occur, every company would send its adjuster to represent their interest, and I have been present in large cities where only two or three men could work advantageously on a loss, and as is well known, would have twenty-five or thirty adjusters sitting around and all waiting to make up figures for them to copy, and yet, but for the existence of the adjustment departments, the proportion of labor which ought to have been performed was done by the twenty-five or thirty, so the formation of these general adjustment bureaus has been quite a saving to the insurance companies in cases of general losses.

Q. In such a case as that, if you were not represented by someone of equal experience, don't you think it would pay to discharge that twenty-five or thirty, or even two or three experienced adjusters that had been appointed by the companies or by the underwriters, and don't you think the insured will find himself at a very great disadvantage in adjusting such a loss? A. I have done business for twenty-five years and have found generally that the insured is pretty well able to hold himself. Of course on the technical side he would be at a disadvantage.

Q. It is a fact that most insurance policies are technical in their terms? A. They are.

Q. And the right of the insurer and the insured are matters which have been passed upon by the courts and what these rights are are known to the adjusters largely, are they not? A. Undoubtedly so.

Q. And are not known as a rule to the insured. As I said before, very few, perhaps, ever read their policy. Now, don't you think, with these conditions existing, that the insured might find himself at a very great disadvantage, unless he was represented by

someone who had that knowledge which he did not possess? A. I do not believe there is any greater dissatisfaction in the adjustment of losses in places where the public adjuster does not exist, than there is in places where he does exist. As I said before he exists in New York City and eastern country and in Chicago and western territory.

Q. Now I have extended this inquiry to the point where I have because I got the impression from what you said at the outset that you considered him very much of a nuisance? A. Certain portions of the genus I think.

By Chairman MERRITT:

Q. Is the knowledge necessary to make a man a competent adjuster, an insurance man generally, of so technical a character that it is really a profession, and not an ordinary business in the ordinary sense? A. The mode of adjusting losses has changed somewhat in the last few years; in fact, it has become very materially specialized of late years, and the system in vogue in the East and the Middle West differs quite materially. Out in the West an adjuster is supposed to tackle a set of books and make an estimate upon an ordinary building and take up the question of damage of stock and non-intricate losses, and take the matter up individually, being selected by the assured, but down here in the East where we have so many losses, adjusters and experts are usually called in on buildings and machinery and electrical matters and stock matters. I think it is due to the fact that there are very many losses down here, there are so many losses that there are not enough adjusters to handle them, and experts are called in for that purpose. I think that the adjuster that existed twenty-five or thirty years ago who generally had a knowledge of everything, has become largely a thing of the past, although out in the western country it differs from what it does down East.

By Judge BRUCE:

Q. Now, in the event an agreement cannot be reached, I presume that results finally in litigation? A. Not necessarily; litigation has not yet arrived. If a disagreement arises we have a right of appraisal, the company selecting one appraiser and the assured

one, and the two so chosen select an umpire whose decision shall be final, except on questions of law; they cannot pass upon questions of law, but it is just conclusive as to the amount of damage.

Q. That is a provision of the standard policy? A. Yes; it is very seldom adopted in the eastern country; in the western country they do too much appraising; in the East I do not think they do enough.

Q. And litigation does not arise over the question of value? A. Very seldom on the question of value, and right on that line I would like to say that later insurance companies have perhaps the reputation of going to too great a technicality in their defenses, and I want to say that my well-considered opinion is that insurance companies generally have something far more substantial back of their defense in litigation on which to base a defense than the mere technical ground, there is something else behind it. There is no use of them going to court on the mere ground of fraud, because they will get beat nine hundred and ninety-nine times out of a thousand; however, they can put on the technical defense for the purpose of defending themselves against what they call fraudulent claims. It is remarkable what little litigation there is on the part of insurance companies considering the policies issued.

Q. Can you give me the proportion? A. I can. Take the company I represent, the number of cases in litigation don't amount to more than 1-10 of one per cent.

Q. Of the losses? A. Of the numerical losses, 1-10 of one per cent.

Q. You are speaking now of losses and not of the policies issued? A. We regard each policy as a loss.

Q. What percentage does it bear to the number of losses; of course, if there is no loss there is no ground for any litigation. Now, can you give me the percentage which it bears to the number of losses? A. That was what I was endeavoring to do, the proportion to the amount of losses.

Q. See if I make myself clear; I understood you to say that it only equaled one tenth of one per cent. of the number of policies issued? A. No, of the number of policies under which losses occurred; for instance, we have 25,000 to 30,000 losses a year, and the number of cases in litigation at the present time, covering

all the litigations that have accrued the last five years does not exceed 50. -

Q. Has that been the experience, so far as you know, of the other large companies doing business here in the metropolitan territory, or in the City of New York? A. Those are litigations over the country at large, and I have had curiosity enough to make inquiry of adjusters of other companies to see how it compared with our own, and I found it about the same, so it shows litigation on the part of insurance companies is very small comparatively; that shows that the adjustments, I think, are regarded as comparatively fair by the insuring public, whether the public adjuster exists or not, and he is only for a small portion of the territory.

Q. Will you proceed to the next topic? A. That is about the extent of my notes that I have covered; I supposed that I would be interrogated quite generally by the Committee on various things that you would have a memorandum regarding.

By Mr. HURRELL:

Q. You spoke yesterday of what I regarded as a significant thing, in one of the forms as to the settlement of goods held by the insured in trust. Have you any recommendation which you wish to make to the Committee which later can be embodied in legislation to correct any of the decisions on which you think the courts have unfairly dealt, not unfairly, but in which the courts have construed the law in such a way as — A. I think it would be hardly worth while to legislate on that matter, because that is a matter the company ought to regulate to their satisfaction, and to the satisfaction of the public.

Q. Just to enlighten the Committee on the topic you had in mind, will you state to the Committee the specific instance of a litigation arising over goods in trust of which you told me yesterday? A. That is a case in New York. It might be a matter of interest to know what it is, as to the far-reaching effect of the words "held in trust" in a fire insurance policy, in fact, what is known as the commission clause; "merchandise owned or held by them in trust or sold but not delivered," that is a clause interjected in all stock policies from time immemorial; it seems to keep it automatically, and I do not think the far-reaching effect of that

clause is generally known by all the insurance companies, and certainly not by the public at large.

By Judge BRUCE:

Q. Is it a clause that appears in the standard policy? A. No, it is simply descriptive; it has been in almost since insurance was known, as far back as my mind goes the commission clause was one of the standard stock clauses. The case was, there was a wholesale grocery store in New York City which agreed to take the entire output of a couple of canning factories in Utica; they sent a consignment of \$1,500 worth of goods down to this concern in New York, and the concern rejected the goods, and the canning companies accepted notice of rejection. The grocery said they were willing to let the goods remain until "we can remove or sell them, certainly we won't have any objection to leaving them, and we won't charge you anything except the drayage out." And the fire came, and badly destroyed the property, and inflicted a partial loss upon the wholesale grocers. He had a superabundance of insurance to cover the 80% requirement, and they requested him to include his particular loss on the canned goods as part of the grocer's loss. Under advice of counsel, the grocer declined to do so, because he did not want to establish a precedent of that kind against himself, that he was obligated to insure somebody else's goods. The fire originated there without any negligence on the part of the groceryman at all, but he failed to include in his claim against the companies the goods of the canning companies; they thereupon filed proof of loss against the insurance companies themselves.

By Mr. HURRELL:

Q. And they had paid no premium? A. They had paid no premium, the goods simply remaining there as matter of grace, and the groceryman did not, and was not obliged to keep the property insured, and there was no negligence or legal liability at all, and no obligation rested upon him. So the canning concern filed proof of loss against various companies within the sixty days as required by the terms of the policies, claiming under "policies issued to A and others," claiming that they were the "others" by reason of the trust clause, and that those policies covered their

goods as well as they did those of the wholesale grocer. The case came up in the Justices Court at Utica; Judgment for plaintiff, and the action was brought in the individual name of the canning companies, and carried to the Supreme Court; judgement affirmed; carried to the Appellate Division; judgement affirmed; they seemed to make out a case that——

Q. What was the name of that case? A. Utica Canning Company vs. Home Insurance Company—DeGraafe was the name. They seemed to establish that DeGraafe was a bailee for hire, but the Appellate Division went out of its way to say whether it was a bailee for hire, still it would have no right to appropriate the insurance for which it paid nothing; that was a mere dictum; that did not go to the Court of Appeals. It shows the far-reaching effects of the "in trust" clause, in which the plaintiff is as much interested as the insurance companies.

By Judge BRUCE:

Q. Is that part of the standard policy included by the law? A. No, that is simply part of the description of the property.

Q. Which the companies can change as they will? A. Yes; we have always regarded those words as simply descriptive of the interest maintained ordinarily; we simply are insuring the wholesale grocer on any interest which he may have in the goods, not insuring anybody else, but the Court seemed to hold that those words go beyond that.

Q. So that is now something for you to correct? A. Yes, I think so, I do not think it is a matter for legislation at all.

By Mr. HUBRELL:

Q. Speaking of adjusters a while ago; I do not think that the Committee got any specific suggestions as to any remedy of legislation; have any of your associates at any time considered recommending any legislation as to the public adjusters? A. No, I cannot say that we have; we know the situation as respects the public adjuster; I do not know that the insurance companies have got any right to complain of his existence; I thought the Committee ought to know that he was here, and perhaps they can pursue their interrogatories along that line; it is a live question. I am not

suggesting his elimination at all, because I think the legitimate public adjusters have a perfect right to be in the business just as well as a lawyer or anybody else, but there are certain features of it which are very exasperating, and I have sympathized more with the assured than the companies because the companies can hold up their own.

By **Chairman MERRITT**:

Q. Well, I want to ask, going back to what you were saying about the co-insurance proposition, what there is in the wording of that phrase of the policy that causes so much dissatisfaction; how does it happen; I want to say that the thing is something that I never could understand. Counsel probably understand it, and the rest of the Committee probably do, but I have had it described to me a good many times and I never could understand it? A. I think it is like some things; it looks complex, and we have made up our minds it is complex, and we are not going to change our minds.

Q. I wouldn't wonder if that was the explanation? A. I think all of us have mental states of that character as respects certain things, and the co-insurance clause seems to have that effect upon the minds of some people; but the principle of average co-insurance has been in marine insurance from time immemorial; from the time before Christ, I guess the doctrine of general average has been in marine policies, so it is that principle applied to fire insurance, and certainly it is a most equitable thing.

By **Judge BRUCE**:

Q. Will you explain it for the record? A. The most popular co-insurance clause, the one most generally used, is the 80%, or 80% average clause; there is such a thing as a fifty and sixty, ninety and one hundred per cent., or full co-insurance clause. Here is the simplest form of putting it — and I think the original phraseology is perhaps complex: "In case of loss this company shall not be liable for a greater proportion thereof than the amount of this policy bears to 80% of the value thereof." That is to say, here is a piece of property worth \$10,000; a man carries \$8,000 insurance upon it. In the event of total or partial loss, he gets all his money, because he has complied with the terms and conditions of that clause.

Q. That is, he is carrying 80% of his value? A. Insures at 80% of the value; therefore, he has acted as an insurance company himself, and if his loss is \$8,000, or less, he gets all his money. Let us suppose, however, that instead of carrying \$8,000 in insurance, as he ought, under the clause, he only carries \$6,000. It is self-evident the company only pays 6-8 of the loss, and he will have to stand 2-8 himself. It might be stated in case the loss is more than 80% in dollars he gets all his money and the clause is inoperative.

Q. If he only carried \$6,000, and it was a total loss, \$10,000 worth of property, how much money would he receive? A. If he carried \$6,000?

Q. If he carried \$6,000 insurance, and there was a total loss of property valued at \$10,000? A. He would get \$6,000, the full face of his policy, he would get it all, he would not contribute anything whatever except the losses which he failed to insure himself.

Q. Suppose there were an 80% loss? A. He would get the full face of his policy.

Q. In what event would he receive less than the full face of the policy? A. If the loss was less than 80% then he would have to stand a portion of the loss himself.

Q. If it was a 60% loss he would receive how much? A. Sixty per cent.—he would get \$4,500 on the \$6,000 loss.

By Mr. HURRELL:

Q. You can always figure that by saying that the man who carried an 80% clause on a \$10,000 building, he only had \$6,000 of insurance, that the situation then is even before a loss, it is just as though he had issued a policy to himself for \$2,000? A. Absolutely, exactly so.

Q. And if there is a fire he has to contribute to his loss just as though he had issued to himself a policy for \$2,000? A. Yes, exactly.

Q. And if it is only \$4,000 it is just as though he had issued to himself another policy for \$4,000? A. Yes, sir. Right along the line I want to say a word in justification of the 80% clause as a reasonable proposition, as a rating proposition. Insurance com-

panies in fixing the necessary rates have in mind the probability of salvage; that is to say, the rate upon a stock of staple goods in original packages, should be less than the rate upon a stock of millinery, because a stock of millinery is liable to be totally destroyed, whereas, the goods in packages would only have a damage upon them. Let us take a man that has a \$100,000 stock, if you please, a stock of original packages, in which there is liable to be so much salvage in almost any circumstances: There are two merchants having risks exactly alike, which would be ordinarily rated alike. Let us suppose one of them carries insurance to the extent of \$80,000, and pays a premium to the company for that. The other one is somewhat close-fisted, and he says: Oh, well, this risk is not going to burn, and anyhow, I will only carry \$20,000; that will cover me against smoke, fire and water damage. I maintain the man that carries \$80,000 is entitled to better terms than the one that carries \$20,000. That is why the 80% is a reasonable proposition as a basis for rating.

By Judge BRUCE:

Q. And that got into the standard policy from the experience of companies, did it? A. Exactly so.

Q. And is the 80% clause in the standard policies of those States which have adopted standard policies? A. They have various riders; I think they are in general use, yes, sir.

By Chairman MERRITT:

Q. Doesn't some trouble come from the fact that there is no agreed value of the property when the policy is written; that the insured has not agreed with the company as to what his property is worth, and therefore, when they come to adjust it, the value that is fixed on the property and the amount of loss that is determined, do not bear the same relation, do not stand as it would if it had been determined when he made his insurance that his property was worth so much, and he was only insuring a percentage of it. I know there are a lot of people — I think I see the point, I never did before; perhaps I never heard it explained as clearly as you have explained it. I was going to ask counsel about it, but I thought I would wait until an expert got on the stand? A. I don't

know. I think it is up to the assured as an original proposition, from what I said a little while ago, that he knows his valuations, and while perhaps they do not exceed the 80% clause, there has been considerable written about it, but there has not been any very brief concise report written. One man has tried it in New York, and I think perhaps a book may be gotten out on the matter giving concrete examples; it might be useful for distribution. I think one company is seriously considering it; the idea is to put it in such a simple form almost anybody can understand it, and I think that ought to be done.

By Mr. HURRELL:

Q. The suggestion the Chairman makes as to the valuation of property for insurance would meet with some difficulty, would it not, in cases of mercantile establishments where the value of the property insured would be continually changing? A. It would be absolutely impossible, except in cases of personal property. I know that Mr. Armour at one time had some grain in an elevator: it burned, he had \$450,000 of insurance, and he had only \$350,000 of grain there, so the fluctuation showed he had not taken the time to cancel his over-insurance; he collected the full value of his grain.

Q. He got the full face of his policies? A. He got the full face of his losses, but there was salvage; he only got \$350,000 out of that \$450,000 insurance.

Q. In New York State is the question of the 80% co-insurance clause a burning question to the small insurer? A. I think not; it is not in the smaller risks in the State of New York.

Q. It is a principle applied to business risks, is it not? A. Yes, sir.

Q. And is there a rule here of the fire insurance exchange that all household property up to a certain amount — A. Under \$2,500 it is exempt.

Q. They do not attempt to put the co-insurance clause on that? A. It is not binding for a \$2,500 valuation.

By Senator WAGNER:

Q. How usually do the figures presented by the public adjuster and the adjuster of the insurance companies compare, in case of a

oss? A. The public adjusters in town here on the medium sized and small losses invariably take an inventory of everything there is in the house, and they rather over do it, I think, and he presents that as a statement of all in the house, whether it is damaged or not, and he is perfectly justified in doing that, but generally the public adjuster files a proof of loss for about three times what he ultimately gets. He works largely at that his joy may be full, but he does not realize upon that.

Q. From that standpoint he is trying the best he can to represent the assured, isn't he? A. Yes, sir; he is doing it to the limit; I think perhaps he might trip himself up on that sometimes, or his poor client, by over doing it.

By Judge BRUCE:

Q. What effect, if any, has the insertion of the 80% co-insurance clause had upon rates? A. I understand that the 80% co-insurance clause has been the basis of all ratings in recent years. That has been taken as the basis, and if a man will take the 100% co-insurance clause, he gets a reduction from the 80% clause for the insertion of the 100% co-insurance clause.

Q. Do you know how much of a reduction? A. I think ten per cent. in New York City.

By Mr. HURRELL:

Q. I would like to ask if you know the condition of the law of foreign countries on this co-insurance clause? A. I do not believe that I do.

Judge BRUCE: That finishes all the witnesses I have for the day.

Chairman MERRITT: We will then stand adjourned until next Tuesday, at 11 o'clock.

Adjourned to Tuesday, November 29, 1910, at 11 o'clock A. M.

TWENTY-FIRST PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

COUNCIL CHAMBER, CITY HALL.

NEW YORK, November 29th, 1910 — 11 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.
HON. ALEXANDER BROUGH, *Vice-Chairman*.
HON. ROBERT F. WAGNER,
HON. WILLIAM W. COLNE.
HON. FRANK L. YOUNG.
HON. JAMES A. FOLEY.
HON. VICTOR M. ALLEN.

HON. M. LINN BRUCE, *Counsel*.
ISIDOR J. KRESSEL, *Assistant Counsel*.

Chairman MERRITT: The Committee will be in order.

Senator FRANCIS H. GATES, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Senator? A. Chittenango, my post office; Madison County.

Q. Were you a member of the Senate of the State of New York during the session of 1908? A. I was.

Q. How long had you served in the Senate? A. Well, that was my last year.

Q. What was your first year? A. 1903.

Q. You served consecutively, did you, from 1903, until the end of 1908? A. I did.

Q. Do you recall that there was pending at the regular session

of 1908 certain bills known as the anti-race track bills? A. I do.

Q. And do you recall that they failed of passage in the Senate at the regular session of 1908, do you? A. I do.

Q. Do you also recall that the Executive called the Legislature in extraordinary session, and that these bills were re-introduced in the extraordinary session which was held early in June of that year? A. I do.

Q. Do you recall that the bill came up for passage in the Senate on Thursday the 11th of June, 1908, and was passed? A. That is my recollection of that date.

Q. Now, Senator, were you ever communicated with by anyone with reference to your vote upon this measure—that is referring to communications in Albany over the telephone or otherwise? A. No.

Q. Did you ever have any conversation over the telephone with Ex-Senator Gardner with reference to meeting him by appointment? A. I was called to the phone on the morning of the 11th, if that was the date that the bill was passed, and I think it was.

Q. Speaking now of the 11th of June? A. Yes, and asked to come down to the Hampton. I asked with whom I was talking, and he said "Gardner." "What Gardner?" "Senator Gardner." Well, I says, "I am going up to the Capitol now. See me up there. It is about as far from the Ten Eyck down to the Hampton as it is from the Hampton up to the Ten Eyck; the distance is about the same." He answered me that—he, whoever was talking; that I cannot say, that it was Senator Gardner, only as he said it was Senator Gardner—he answered that he didn't want to come up to the Capitol; that he did not want to go up to the Capitol, or words to that effect.

Q. Was there anything further said? A. No.

Q. Now, Senator, did anyone else endeavor to make any appointment with you for the purpose of talking with you in regard to your action upon these measures? A. Never.

Q. Were you ever approached by anyone with reference to your action upon these measures? A. I think I had one letter from a gentleman in Canistota.

Q. I mean were you approached in a sinister or invidious manner by anyone with reference to your vote? A. Not upon that bill, nor upon any other, while I was in the Senate.

Q. You served with Senator Gardner in the Senate during the session of 1905-1906, did you not? A. I think so.

Q. You knew him? A. Yes.

Q. Did any other Senator ever state to you that he had been approached by Senator Gardner or anyone else, in a sinister way in reference to his vote upon these measures? A. He did not.

Judge BRUCE: That is all.

THOMAS J. REGAN, called as a witness, being duly sworn,
testified as follows:

By Judge BRUCE:

Q. Where do you reside, Mr. Regan? A. Westbury, Long Island.

Q. And what is your business? A. Lawyer, and Whitney estate.

Q. Are you the secretary of Mr. Harry Payne Whitney? A. Yes, sir.

Q. Do you know where Mr. Whitney is? A. Yes, sir.

Q. Where is he? A. He is in Europe.

Q. When did he go to Europe? A. I do not know.

Q. How long ago? A. I suppose approximately a month or so ago; a month and a half ago.

Q. When did you last see him? A. About two months ago.

Q. You have not seen him since that time? A. No, sir.

Q. Do you recall having a communication over the phone with Mr. Kresel, one of the associate counsel of this committee, in relation to the whereabouts of Mr. Whitney some two weeks ago or three weeks ago — shortly after the 20th of October? A. I do not remember it.

Q. Do you remember him inquiring and telling you that he was speaking from the officers of the investigating committee and asking you the whereabouts of Mr. Whitney? Do you recall that? A. I do not recollect. Possibly it was somebody in the office.

Q. No; with you. Do you recall that? A. I have forgotten it.

Q. Don't you recall his stating to you over the phone that the

committee were very anxious to examine Mr. Whitney and would like to get word from you of his whereabouts, and you stated you knew where he was and that you would communicate with him at once and let Mr. Kresel know. Do you recall that? A. I do not remember that. It must have been, possibly, someone in my office.

Q. No, with you, personally. Mr. Kresel inquired who it was and the party stated it was Mr. Regan; stated his connection with Mr. Whitney. Do you recall that? A. It has gone clean out of my head.

Q. On what date did Mr. Whitney sail for Europe? A. I do not know, sir.

Q. Can't you tell me about when it was? A. No, sir; I do not know.

Q. On what steamer? A. I do not know what steamer he sailed on.

Q. For what port? A. The first I heard from him was from Paris, I think it was.

Q. Did you know he was going? A. I knew he was going sometime, but I did not know when, because he had made preparations to take a house in England last May, and he intended to go there for the hunting season.

Q. Well, didn't you know shortly before he was going that he was going? A. No, sir.

Q. He didn't let you know? A. No, sir.

Q. Did you see him off? A. No, sir.

Q. Didn't let you know what steamer he was going on? A. No, sir.

Q. Did he state to you what port he was going to? When did you last hear from him? A. This — yesterday.

Q. Yesterday? A. Yesterday.

Q. Where was he then? A. He was at Baritz.

Q. Was it by cable or by letter? A. By cable.

Q. You haven't seen him, then, for two months? A. No, sir.

Q. Do you know where a communication would reach him? A. I think Baritz.

Q. Do you know how long he expects to remain there? A. I do not. He is motoring around through South France and probably in Spain.

Q. When did you expect to communicate with him again? A. Well, I had no expectation at once, but nothing is in my mind now that would suggest a communication.

Q. Well, will you kindly communicate with him and state that the committee is very anxious to examine him, and take his testimony upon a certain matter that they have under consideration, and send me a memorandum of the amount of the cable, and I will be very glad to pay you for it? A. Thank you, sir. I will.

Judge BRUCE: Thank you, that is all.

VICTOR E. SCHAUMBURG, called as a witness, being duly sworn, testified as follows:

By Mr. KRESEL:

Q. Where do you live, Mr. Schaumburg? A. 245 Putnam avenue, Brooklyn.

Q. And what is your business? A. Present secretary, Coney Island Jockey Club.

Q. And where is your office? A. 571 Fifth avenue, New York.

Q. How long have you been secretary of the Coney Island Jockey Club? A. Since March 30th, 1909.

Q. And prior to that date were you connected with that club? A. I was.

Q. In what capacity? A. Previous to that time I was cashier, and prior to that, assistant cashier.

Q. How long were you assistant cashier? A. About four years.

Q. So that, altogether, you have been connected in an official capacity with the Coney Island Jockey Club about how many years? A. Eight years and a half.

Q. Eight and one-half years? A. Yes, sir.

Q. As such secretary, Mr. Schaumburg—— A. (Interrupting) I would not call cashier an official position; just a clerk.

Q. We understand. As secretary, Mr. Schaumburg, did you keep the minutes of meetings of the board of directors of the Coney Island Jockey Club? A. I did; yes, sir.

Q. This Coney Island Jockey Club is a stock corporation, is it not? A. Yes, sir.

Q. And has it an executive committee? A. Yes, sir.

Q. And did you keep the minutes of the executive committee meetings? A. During the time I was secretary; yes, sir.

Q. Well, since you have been secretary? A. Since I have been secretary; yes, sir.

Q. Now, as secretary, do you also keep the books of account of the club? A. Yes, sir; of the general accounts.

Q. Well, when you say "general account," from what other account do you distinguish it? A. We have two accounts; a general account relating to the general business of the club and also a racing account relating exclusively to racing matters.

Q. Well, now, you keep only the books of the general account? A. Yes, sir.

Q. Who keeps the books of the racing account? A. Russell; G. C. Russell.

Q. What is his connection with the club? A. He is book-keeper.

Q. Bookkeeper? Does he keep these books under your direction as secretary? A. Yes, sir.

Q. Has the club a treasurer? A. Yes, sir.

Q. Who is the treasurer? A. Francis R. Hitchcock.

Q. Does the treasurer keep books as treasurer? A. No. None except what I keep.

Q. None except what you keep? A. No, sir.

Q. So that the treasurer's accounts are contained in the books that you keep? A. Correct, sir.

Q. Now, you have been subpoenaed to produce certain books of account of the Coney Island Jockey Club. Have you produced those? A. I have not been requested to produce the books of account. I have been requested to produce the meeting of the committee books of the Coney Island Jockey Club.

Q. The minute books and the others?

Mr. TUTTLE: May I make a statement?

Mr. KRESEL: No, sir, you may not.

Q. Have you produced the books of account of the Coney Island Jockey Club, as you were subpoenaed to produce them, to-day? A. I have the minute books at hand, sir.

Q. I did not ask about the minute books. I am speaking, sir,

of books of account? A. I have them here also, but I have not been requested to produce them by subpoena.

Q. You have them here? A. I have them here.

Q. And also the minute books? A. I have them.

Q. Please produce the minute books?

Mr. KRESEL: One minute, Mr. Tuttle. Mr. Chairman, I object to any statement of counsel. This witness is not entitled to be represented by counsel, and it has been the invariable rule of this Committee not to have the statements of counsel.

Mr. TUTTLE: Not having been subpoenaed to produce the books, I just wanted to say why we have produced them.

Chairman MERRITT: If the books are here, it answers the question. The position of counsel is well taken, and the Committee will sustain it.

Mr. TUTTLE: We just wanted to reserve a point that though we were not called upon by the Committee to produce the books, without questioning the authority of the Committee of calling upon him for the production of books, that the witness did not have power to supply, inasmuch as the Committee has always had access, and has used that access frequently, we produce the books here at the request of the Committee.

Judge BRUCE: Well, the books are here?

The WITNESS: Yes.

Judge BRUCE: That is satisfactory to us.

By Mr. KRESEL:

Q. Now, Mr. Schaumburg, these general accounts are contained in what books? A. In the cash book and the ledger.

Q. Cash book and ledger? Do you keep any other books besides the cash book and ledger? A. I keep a voucher book.

Q. A voucher book? A. Yes, sir.

Q. Now, any others? A. No, sir.

Q. Do you keep a journal? A. No, sir.

Q. A day book? A. No, sir.

Q. Have you a trial balance book? A. No, sir.

Q. Have you kept books? A. Yes, sir.

Q. You keep the stubs of your checks? A. Yes, sir.

Q. And you preserve vouchers that are returned by the banks?

A. The vouchers; yes, sir. They are pasted in the check book to the stubs.

Q. You have produced here, then, the ledger for 1908 and 1909, is that right? A. That is right, sir.

Q. And the cash book for the same period? A. Yes, sir.

Q. And the voucher book for the same period? A. Yes, sir.

Q. Now, will you take the voucher book, please, Mr. Schaumburg, and I will take the cash book, and I want to ask about certain entries therein? A. Yes, sir.

Q. Will you look at voucher No. 18, under date of January 13? A. Yes, sir.

Q. 1908? A. Yes, sir.

Q. There is a payment there to E. P. Coyne, \$2,500? A. Yes, sir.

Q. Who is E. P. Coyne? A. A lawyer, as I believe.

Q. A lawyer? A. Yes, sir.

Q. Do you know him? A. I do not.

Q. Do you know that he is a lawyer? A. Only from hearsay.

Q. Did you make this payment? A. I drew the check.

Q. You drew the check for it, and when you drew the check did you have a bill for services? A. I do not remember.

Q. Do you remember ever receiving any bills from Mr. Coyne? A. We have a voucher for every payment that is made.

Q. That is, you have a bill for every payment that is made? A. Or had a bill at the time this check was drawn. I do not know that with every check we have a bill in advance. We either drew a check in advance and received a bill for the amount later on.

Q. But, at any rate, your records are complete in so far that you have a bill for every payment that has been made? A. Correct, sir; a bill or receipt for every payment made.

Q. Bill or receipt? A. Yes, sir.

Q. And you think that you have a bill for this payment to Mr. Coyne? A. I do.

Q. \$2,500? A. Yes, sir.

Q. How is the payment entered in your voucher book? A. Legal expenses.

Q. Legal expenses? A. Yes, sir.

Q. Therefore there is not much doubt in your mind but that Mr. Coyne is a lawyer? A. None at all.

Q. Now, look to the date, please, of February 10th of the same year. There is a payment there to C. J. Fitzgerald, \$2,216.49?

A. Yes, sir.

Q. How is that entered in your book? A. Legal expenses.

Q. Who is Mr. Fitzgerald? A. Mr. Fitzgerald--he was at that time connected with the Brighton Beach Racing Association.

Q. Is he a lawyer? A. No; not to my knowledge.

Q. He is not a lawyer? A. No, sir.

Q. What was his connection with the Brighton Beach Racing Association? A. Manager of the Brighton Beach Racing Association.

Q. What was this payment of \$2,216 for to Mr. Fitzgerald, charged to legal expenses? A. Well, as I understood, it was for legal expenses.

Mr. COLNE: What year was that, Mr. Kresel?

Mr. KRESSEL: February, 1908.

The WITNESS: February, 1908.

Q. What legal expenses were there paid to Mr. Fitzgerald? A. That one check I was instructed to draw, that check of \$2,216.49 to Mr. Fitzgerald.

Q. By whom were you instructed? A. By the then treasurer, Mr. Bradford.

Q. Who? A. J. H. Bradford.

Q. Bradford? A. Yes, sir.

Q. Is he living now? A. No. He is dead.

Q. That was the amount that was your contribution, wasn't it, to that legal expense? A. That is what I understood; yes, sir.

Q. And what proportion of the legal expenses was it that your association was contributing? A. I have no idea, sir.

Q. Was it 25 per cent.? A. I couldn't say.

Q. Well, at any rate, what did Mr. Bradford tell you when he directed you to draw this check of \$2,216.49? A. As far as I can remember now, he directed me to draw this check for this amount of \$2,216.49 to the order of Mr. Fitzgerald.

Q. Will you please produce at two o'clock this afternoon, if you will, the check voucher on which this payment was made? A. Yes, sir.

Q. And the receipt for it? A. Yes, sir.

Q. Will you also produce the check to Mr. Coyne and the receipt of bill for that? A. Yes, sir; the check and bill for both.

Q. Now, Mr. Schaumburg, will you look under date of July 28, 1908. Do you find there a payment of Frank K. Johnston? A. Yes, sir.

Q. \$3,000? A. Yes, sir.

Q. How is that entered? A. Frank K. Johnston, retained for special services.

Q. Retained for special services? Is that charged to legal expenses? A. Yes, sir.

Q. Do you know who Mr. F. K. Johnston is? A. Personally, I do not.

Q. Do you know whether he is a lawyer? A. I understand he is; yes, sir.

Q. Do you know where his office is? A. I do not; no, sir.

Q. Who directed you to draw that check? A. One of the officers of the club then, Mr. Fellowes, I presume, or Mr. Hitchcock.

Q. Do you simply presume that, or do you know? A. I cannot remember at this time.

Q. You cannot remember? Do you know what those services were with Mr. Johnston? A. Only in a general way, for legal expenses.

Q. Do you know whether he had any connection with that suit? A. I do not; we had various suits at that time to protect our interests.

Q. Didn't your club have a regular attorney? A. A regular attorney?

Q. Yes, sir. A. The club had several attorneys.

Q. And such actions as were brought by your club or against your club were conducted by your regular attorneys, were they not? A. As I say, we had other attorneys, according to what the matter might have been, it was referred to the various attorneys.

Q. Do you recall whether Mr. F. K. Johnston appeared as attorney for your club in any action? A. I think he must have.

Q. Did you retain him? A. I did not.

Q. Do you know who retained him? A. I do not.

Q. Do you know what his retainer was to be? A. I do not.

Q. Do you know what sort of an action he represented the club in? A. The association under the act of July.

Q. The act of July in what? A. In protecting the interests of the racing association under the Agnew-Hart Law.

Q. Did these services have some connection with the Agnew-Hart Law? A. They may have had; yes, sir.

Q. In an attempt to test the constitutionality of the act, the racing association acted in harmony? A. Yes, sir.

Q. It bore a proportionate share of the expense? A. That is what I think; yes, sir.

Q. How much was the expense that Mr. Johnston put the association to? A. I have no idea. All I can say is this, that of the \$3,000, \$2,250 were paid by three other associations. We really only paid \$750 to Mr. Johnston on this account.

Q. Your memory is getting a little better. What was it that Johnston did for the association? A. I could not say. He acted in some legal capacity for the club.

Q. Did he bring an action to test the constitutionality of the Agnew-Hart law? A. He may have acted with some of the other attorneys. I don't know of my own knowledge.

Q. The entry there is for special services. A. Special services.

Q. Was it legal expenses? A. (No answer.)

Q. What associations were they that shared your expenses of \$3,000 with your club? A. The Westchester Racing Association, \$750; the Saratoga Racing Association, \$750; the Empire City Racing Association, \$750.

Q. And your club paid \$750? A. \$750; correct, sir.

Q. Did you personally retain Mr. Johnston? A. I did not.

Q. Do you know who did? A. I do not.

Q. Now, will you be good enough to produce Mr. Johnston's bill here? A. Yes, sir.

Q. Who is Mr. A. Daingerfield? A. He is the assistant secretary of the Jockey Club.

Q. The Jockey Club? A. Yes, sir.

Q. Well, now, Mr. Schaumburg, will you please tell us something about the Jockey Club? A. Yes, sir.

Q. What sort of an organization? A. The Jockey Club is, prac-

tically speaking, the governing body of the association. It frames rules and makes rulings for the conduct of racing. Keeps — appoints the racing officials for the various racing associations during the race meetings, judges, handicaps, and stewards. It also imposes fines on owners and trainers and also licenses the owners of horses, race horses, and jockeys, and keeps the fine account. Also, the forfeit list of various owners being in arrears. Also keeps a record of the foals, and issues a stud book. The foals are the thoroughbreds. In fact, it is the organization under which the various racing associations race.

Q. Now, the Coney Island Jockey Club, is that under the jurisdiction of the Jockey Club? A. No, only so far as the racing is concerned.

Q. I notice through your books here different items in which the Jockey Club is mentioned in a general way? A. We sub-rent our offices from the Jockey Club. The Jockey Club leased the offices on that floor. You will see payments there of \$250, \$300. that might be charges for telephone and ticker.

Q. Well, there are quite large sums in some cases. Look under the date of July 16, 1908? A. What item, sir?

Q. Do you find an item there "Jockey Club, \$2,950?" A. Yes, sir; that is the salary of the racing officials for the June meeting.

Q. Did you pay the salary of the racing officials? A. Yes, sir.

Q. That is, every racing association that holds a meet pays the salary of the racing officials? A. Yes, sir.

Q. And you paid these through the club? A. The club. The club paid the racing officials direct by check, and we repaid the Jockey Club.

Q. This payment of Daingerfield, under date of November 10th, 1908, \$757.73, is that charged to legal expenses? A. Yes, sir.

Q. What was that a payment of? A. According to the voucher book, it was a balance to R. C. Cummings on account of legal fees.

Q. To R. C. Cummings on account of legal fees? A. Yes, sir.

Q. I notice in pencil in the cash book, R. C. Cummings. Who was R. C. Cummings? A. He must have been an attorney.

Q. Do you know? A. Not of my own knowledge; no, sir, I do not.

Q. That, too, was a proportionate amount paid by your club?
A. Yes, sir.

Q. Do you remember how much Mr. Cummings' bill was? A. I do not; no, sir.

Q. If you had made payments for Mr. Cummings' account before, his book entry would indicate that, wouldn't it? A. It would, but evidently I did not.

Q. The entry says, "Balance of account" facing it? A. Balance due. Perhaps there was a bill rendered.

Q. Did you get a bill from Mr. Daingerfield or Mr. Cummings?
A. My recollection is that I have a memorandum on that.

Q. Can you produce that memorandum, please? A. Yes, sir.

Q. Now, under date of November 17, Mr. Schaumburg, there is an entry in your cash book, "F. K. Sturgis, Treasurer, \$5,714.29?" A. Yes, sir.

Q. Was that charged to legal expenses? A. Yes, sir.

Q. Who is F. K. Sturgis, treasurer? A. He is the treasurer of the Jockey Club.

Q. This was another payment to the Jockey Club? A. Yes, sir.

Q. To him as treasurer? A. Yes, sir.

Q. What was that a payment for? A. That, as I remember it now, was a payment, the amount of which was to be placed in a fund to cover future legal expenses.

Q. Of what nature? To cover legal expenses of what nature, Mr. Schaumburg? A. I presume to protect the interests of the club, and also to test the constitutionality of the law, and to bring the test cases.

Q. This was in November, 1908? A. 1908, yes, sir.

Q. Are you sure that it was to cover future expenses, or wasn't it in payment of services rendered? A. No, our minute book, as you saw the other day, that says "Future legal expenses."

Q. There is a minute in your record? A. Yes, sir.

Q. Of this payment? A. Yes, sir.

Q. Can you find it for me, please? A. Yes, sir.

Q. You have directed my attention to minutes of a meeting of the executive committee of the Coney Island Jockey Club held on Wednesday, November 25th, 1908? A. Yes, sir.

Q. Is that right? A. Yes, sir; correct, sir.

Q. (Reading): "On motion, duly seconded, it was moved and carried that the payment by the treasurer of \$5,714.29 to F. K. Sturgis, treasurer, be placed in a fund to meet future legal expenses, be approved." Was it approved? A. It was approved.

Q. Who was the treasurer at that time? A. At what time is that, sir?

Q. November, 1908? A. Mr. F. R. Hitchcock.

Q. Mr. Hitchcock? A. Yes, sir.

Q. Has that money been expended? A. I don't know, sir.

Q. Who was custodian of the fund? A. I presume Mr. F. K. Sturgis.

Q. He is the treasurer of the Jockey Club? A. Yes, sir.

Q. How much did the fund consist of? A. I have no idea, sir.

Q. Do you know what this amount of \$5,714.29 referred to? A. I have no knowledge.

Q. Was it proportioned among other associations? A. Perhaps it was.

Q. Don't you know that it was? A. I do not.

Q. You know what proportion they were to pay? A. I can't say.

Q. Who suggested this amount? A. One of the officers at this time, Mr. Hitchcock, or Mr. Fellowes.

Q. Have you a bill? A. I presume I have.

Q. How can you have a bill if it hasn't been expended? A. I mean a receipt.

Q. Did you get any voucher at the time you paid out this \$5,700? A. I don't remember whether I did or not.

Q. Yet you have the voucher now? A. Yes, sir.

Q. Will you produce it, please? A. Yes, sir.

Q. Mr. Schaumburg, do you know how much the legal expenses of your club during the year 1908 amounted to? A. About \$26,000, I think the books show \$29,000, but that \$3,000 is a damage suit that we settled, and charged to legal expenses. It was \$29,000 with \$3,000 for the settlement of that accident case, and \$5,700 on account of future legal expenses. Practically speaking, the legal expenses were about \$21,000.

Q. Do you include in those legal expenses any damages that you had to pay for accidents? A. Yes, sir.

Q. That is included in the \$29,000? A. Yes, sir.

Q. The only accident which you had to pay for was \$3,000?
A. Yes, sir.

Q. So that your actual legal expenses for the year 1908 are about \$26,000? A. \$26,000, less \$5,700, for which we have received no memorandum.

Q. Do you know whether it has been expended? A. I do not.

Q. At any rate, you charged it against your legal expenses? A. I did, sir.

Q. That is, you included the fees of your regular attorneys? A. Yes, sir.

Q. Who were your regular attorneys? A. Davies, Stone & Auerbach.

Q. And the others? A. Mirabeau & Towns.

Q. And these other gentlemen, Johnston and Cummings? A. I believe the ledger shows the attorneys employed by us.

Q. In this \$26,000 in 1908, are there included any legal expenses paid to Davies, Stone & Auerbach, for instance? A. Yes, sir.

Q. Will you find me any payment there that Davies, Stone & Auerbach in 1908 included in that \$26,000? A. The check may not have been drawn to Davies, Stone & Auerbach.

Q. To whom was it drawn? A. It may have been drawn, for instance, to A. Daingerfield, and maybe to Mr. F. K. Sturgis.

Q. Any others? A. No, that is all, sir.

Q. Mr. F. K. Sturgis is the treasurer, is he not, of the Jockey Club? A. Yes, sir.

Q. Mr. Daingerfield was what? A. Assistant secretary.

Q. He was assistant secretary? A. Yes, sir.

Q. So that, whenever you made any proportionate payment for legal expenses, the checks were either drawn to Mr. Daingerfield or Mr. Sturgis? A. Yes, sir.

Q. Is that right? A. That is right, sir.

Q. Now, in 1909, Mr. Schaumburg, can you tell me how much your legal expenses were? A. I think they were about \$2,500.

Q. \$2,100, weren't they? A. I should say about \$2,500.

Q. Look at your legal expenses in your ledger? A. Yes, sir.

Q. How much were they in 1909? A. \$2,147.75.

Q. About \$2,100? A. Yes, sir.

Q. Now, you had some miscellaneous expenses, didn't you, during 1908? A. Yes, sir.

Q. Will you tell me how much that amounted to? A. In 1908? \$12,917.85.

Q. And how much were they in 1909? A. In 1909, practically speaking, they were \$12,897.85. I show a credit here of \$20. In 1909 there were \$12,740.37.

Q. Now, Mr. Schaumburg, under date of July 6, 1908, I find an entry of the payment of \$20,000 to the Coney Island Jockey Club, "Account Loan." Do you find that? A. What date is that, sir?

Q. July 6, 1908? A. (Reading) "Coney Island Jockey Club, racing account, loan \$20,000."

Q. Does that stand for the Coney Island Jockey Club? A. Yes, sir.

Q. This was, then, a payment of \$20,000 to the Coney Island Jockey Club? A. Racing account, yes, sir.

Q. The racing account? A. Yes, sir; it was simply a transfer from the general account to the racing account.

Q. What was that for? A. It was a general credit borrowed of \$20,000 from the racing account, and returned to it.

Q. Who keeps these various accounts? A. I keep the general account, and the bookkeeper keeps the racing account.

Q. Who keeps the moneys of these accounts? A. The treasurer is the custodian of the funds of the club.

Q. He has at all times been the custodian? A. He has.

Q. You have at no time been the actual custodian of the moneys? A. No, sir; excepting under his direction I have, and of course, since I am secretary, I might say I was partly responsible for them.

Q. Let me understand. Have you at any time had actual custody of the funds of the Coney Island Jockey Club? A. No, I might say not. The by-laws provide that the treasurer has.

Q. You have a treasurer? A. Yes, sir.

Q. Mr. Hitchcock? A. Yes, sir.

Q. Prior to his incumbency, who was there? A. Mr. Bradford.

Q. He is dead? A. He is dead.

Q. Well, now, the treasurer then keeps two separate accounts,

the racing account and the general account? A. The racing account is really kept by the secretary. It is in the secretary's charge.

Q. Then you practically have charge of the racing and the moneys? A. Yes, I have, practically.

Q. And you have had ever since you have been secretary? A. Practically, because in one respect I am secretary of the club, and also keep the accounts of —

Q. Mr. Hitchcock is really only the nominal treasurer? A. Yes, sir.

Q. You keep his account? A. Yes, sir.

Q. You draw the checks? A. Yes, sir.

Q. Have you authority to draw all these amounts, or does Mr. Hitchcock sign the checks? A. We sign the checks jointly.

Q. You have to have both names? A. Yes, sir.

Q. Well, then, the club had two separate accounts, the racing and the general account? A. Yes, sir.

Q. Sometimes the general account would borrow from the racing account? A. Yes, sir.

Q. This is what was done with the \$20,000 from the general account taken to the racing account? A. Yes, sir.

Q. Was this loan evidenced in any way by any writing? A. The checks; the checks show.

Q. Who made the checks? A. I drew the checks. The checks from the racing account show that they were drawn to the order of the Coney Island Jockey Club and deposited in the bank which had the general account, and when the check was repaid to the racing account, the check was drawn from one bank and deposited in the other.

Chairman MERRITT: He kept separate accounts in separate banks.

Q. In what banks were they kept? A. In 1908?

Q. Yes. A. In 1908, I think the general account then was kept in the Fifth Avenue Bank, and the racing account in the Windsor Trust Company at that time.

Q. Do you recall, Mr. Schaumburg, when this loan was made of \$20,000, and repaid July 6th? A. When the loan was made?

Q. Yes, sir. A. The ledger would show it, sir.

Q. Will you see? A. Yes, sir. There were several loans made according to the ledger, from the racing account.

Q. This particular loan of \$20,000, can you tell me about that one? A. Yes, the loan was made — I couldn't say — there were various loans made, one of January 13th, for \$5,000, and one of January 16th for \$5,000.

Q. Take the beginning of the year 1908; any loans made then? A. Yes, sir.

Q. How much? A. \$45,000.

Q. \$45,000? A. Yes, sir.

Q. Subsequent to the first of January, 1908, what were the loans made from the racing account to the general account? A. I think \$45,000.

Q. A total of \$45,000? A. A total of \$45,000, yes, sir.

Q. The first loan that you have there is under date of January 13, 1908? A. Yes, sir.

Q. For \$5,000? A. Yes, sir.

Q. Will you tell me what the occasion was to transfer that from the racing account? A. To meet our bills at that time.

Q. Do you have any idea how much cash the general account had at that time? A. It must have been a very small one, because it was tied up in the Knickerbocker Trust Company at that time.

Q. How much did you have with the Knickerbocker Trust Company that was tied up? A. I don't remember at this time; over \$200,000.

Q. That was the reason, then, for borrowing from the racing account? A. Partly; yes, sir.

Q. I notice an entry in your cash book that you had \$194,000 in round figures in the Knickerbocker Trust Company? A. Yes, sir.

Q. Do you see it? A. Yes, sir.

Q. Now, will you look under date of July 16, Mr. Schaumburg? A. I find an entry, "The Coney Island Jockey Club, added money," in 1908, sir.

Q. 1908? A. Yes, sir.

Q. And \$178,265? A. Yes, sir.

Q. Do you find that? A. Yes, sir.

Q. What does that mean, "added money?" A. That \$178,265

represents money that we added to the stakes, over night events, that we ran off during the June meeting of that year.

Q. Is that an expense? A. That is an expense; yes, sir. Stakes that were closed prior to the passage of the Agnew-Hart law, and for which we were liable.

Q. That is, in July, 1908, after the passage of the Agnew-Hart law, the Coney Island Jockey Club paid out \$178,265? A. Yes, sir.

Q. To pay prizes? A. To pay for moneys added to stakes which practically closed before the passage of the Agnew-Hart law, and for which the club was liable, and also for over-night races that we ran off during the meeting.

Q. This was the June meeting? A. Yes, 1908. The Coney Island Jockey Club couldn't get away from its obligations, and wouldn't have, if it could, and it paid.

Q. Was there any added money paid subsequent to July, 1908? A. During the autumn meeting, yes, sir. We had an autumn meeting, and paid out another amount of money. I don't remember just now, but I can tell you.

Q. Look under date of September 19, 1908? The Coney Island Jockey Club added money then? A. I stated that we lost \$103,920.

Q. Was that an obligation that had been contracted before the passage of the bills? A. Practically, the most of it, yes, sir.

Q. Not practically or most of it; was it a payment of an obligation contracted before the passage of these bills? A. The major portion of it was.

Q. How much? A. I should say about \$80,000.

Q. And the difference of \$23,000 was contracted after the passage of the bills? A. If you will allow me—let me see how many racing days we had in the autumn meeting—I might be able to give you a better idea.

Q. Yes. A. Yes, I think that is about right, \$80,000 to \$85,000.

Q. And, if I understand it, these were contributions made by the Coney Island Jockey Club to the purses that were offered for the winners of horse races, is that correct? A. That is correct.

Q. And were such purses paid during meets held by the Coney

Island Jockey Club? A. Paid within two weeks after the close of the meet, two or three weeks, directly after.

Q. Yes, but I mean after those contributions were made to the winners that ran races at meets held by the Coney Island Jockey Club? A. Yes, sir.

Q. Not any other club? A. No, just by the association, not by any other jockey club.

Q. Was there any other added money that you paid besides this \$103,000 and the \$178,000? A. No, I do not believe there was; there might be an error of \$100; it might have been \$100 short, or something, but nothing more. The ledgers would show, anyway, the total amount. That is the best way. (Examining ledger.) No, sir, those were the two amounts, \$282,185 for the year 1908.

Q. How about 1909; did you pay any added money then? A. Yes, sir.

Q. How much? A. We paid a total of \$130,120.

Q. During what meet? A. The spring meet, June meet, \$74,550, and autumn meeting \$55,570.

Q. Where was the June meet held? A. At the race track of the association at Sheepshead Bay.

Q. And where was the fall meet held? A. At the same place.

Q. Then do we understand that your club paid the amounts that you have mentioned? A. Yes, sir.

Q. As contributions to purses offered during 1909? A. Yes, the stakes, that closed during the year, and also several stakes that had closed previous to the passage of the Agnew-Hart law, such as the Futurity and Lawrence Realization, and another stake race, I don't remember the name of it just now.

Q. Since after the pendency of the Agnew-Hart bills your association had occasion to employ detective agencies a good deal?

A. We had also employed a detective agency before.

Q. The Pinkerton was the one you employed? A. Yes, sir.

Q. You made quite large payments to them, did you? A. Nothing out of the ordinary except for the hire of special policemen and gate men, officers, detectives.

Q. I notice a payment that you made under date of August 27, 1908, to the Pinkerton National Detective Agency, which is entered as "Suppressing Pool Room Information;" what is that? A. Suppressing pool room information, \$60,174.

Q. Yes, what information were you interested in suppressing?

A. We were not interested in suppressing—let me see—I presume, of course I don't know it as a fact, but I presume they were employed at that time to see what pool rooms were operating, or if there was any kind of information they were getting. We tried to suppress all information from the track going to any pool room; that is what I imagine that account covers.

Q. Your association was endeavoring to suppress information?

A. To the pool rooms.

Q. Going from the tracks to the pool rooms? A. Yes, sir; that may also cover the item—we put up these large awnings or canvas sheets; that item may be for that, putting up the poles and canvas sheets around the track.

Q. That is not suppressing pool room information, putting up awnings? A. Yes, it is; it would keep anyone from seeing the result of the races and telephoning or telegraphing them to the city.

Q. Did you have a system of dividing income with other racing associations, holiday incomes? A. Yes, sir.

Q. What was that? A. We divided a certain portion of the holidays, such as the Fourth of July and Labor Day, with the Westchester and Brooklyn Racing Associations, so as to equalize the number of holidays in the year. For instance, we had two holidays, the Fourth of July and Labor Day; Belmont Park only had one, Decoration Day; Brooklyn didn't have any.

Q. So that you pooled your incomes for the holidays and divided them? A. The net income, yes, sir.

Q. The net income? A. Yes, sir.

Q. And you have an account in your ledger of these holiday divisions, haven't you? A. Yes, sir.

Q. Will you turn to it, please, for 1908? A. Yes, sir.

Q. With what associations did you say you were dividing? A. Westchester and Brooklyn.

Q. And are these divisions of net profits? A. With us it happened to be a loss so far as the Coney Island Jockey Club was concerned; the Agnew-Hart law went into effect on June 11th and the Westchester Racing Association had already run off their Spring meeting, and, of course, made a profit; so that we had a loss; Westchester had a profit, and they paid us the amount mentioned here.

Q. They paid you \$7,062.04? A. Yes, sir.

Q. Has there been any division since then? A. No, sir.

Q. Either of profits or losses? A. Either of profits or losses. I will see to make sure; one moment, please; yes, there has, in 1909.

Q. In 1909 was there a division of profits or of losses? A. Profits; on that day alone.

Q. What day? A. On these days, Decoration Day, the Fourth of July and Labor Day.

Q. That is, notwithstanding the passage of the Agnew-Hart racing bills, there were profits to be divided? A. During 1909?

Q. During 1909. A. Yes, sir.

Q. And how much were the profits that were divided? A. The profits that were divided — the Coney Island Jockey Club paid on account of those days, \$8,338.52.

Q. And in what proportion were those profits divided? A. Thirds.

Q. Thirds? A. Yes, sir.

Q. That is, the profits of July 4th were they, you were giving me there? A. July 4th, Decoration Day and Labor Day, the three days.

Q. Does the \$8,000 that you mentioned include the proportionate profits for the three days? A. Yes, sir.

Q. So that for those three days the profits were in the neighborhood of \$25,000? A. Yes, sir.

Q. Almost \$25,000? A. Yes, sir.

Q. Mr. Schaumburg, when did you get your money from the Knickerbocker Trust, do you know, when was it released? A. It was paid in instalments, sir.

Q. Paid in instalments? A. Yes, sir.

Q. Do you know whether, in December, 1908, you still had any money tied up with the Knickerbocker Trust? A. No, but I could tell you accurately by looking at the ledger.

Q. You have a ledger, I think? A. Yes. December!

Q. December, 1908? A. Yes, sir, we did.

Q. How much did you have tied up? A. December, 1908. \$119,366.84.

Q. You borrowed \$200,000 from the Farmers Loan & Trust Company? A. Yes, sir.

Q. When was that borrowed? A. \$200,000 was borrowed from the Farmers Loan & Trust Company July 10th, 1908.

Q. July 10th, 1908? A. Yes, sir.

Q. Well, what was the urgent expenditure that required a loan of that sum of money? A. To help pay a portion of our losses for that year up to that time.

Q. Up to July, 1908? A. Yes, sir.

Q. You had not been making any losses up to the time the Agnew-Hart bills were passed? A. No, but we ran our June meet and we had to pay \$178,000 on account of added money at that meeting.

Q. Than it was not to pay any losses incurred up to July 1908, was it? A. Most of it.

Q. You had not incurred any losses up to July? A. We certainly did; we ran our June meeting.

Q. When did you run your June meeting? A. And we made large improvements down at our track.

Q. If we are going to have improvements we won't have losses; which is it, improvements or losses? A. It is a loss. Every improvement that has been made down there has been a loss on account of the passage of the bill.

Q. Up to the time of the passage of the bill? A. Yes, sir.

Q. Do you mean to say ——— A. No, no, not prior to that, certainly not prior to it.

Q. You know when the bill was passed, don't you? A. July 11th.

Q. June 11th, wasn't it? A. Yes, June 11th, 1908.

Q. You didn't mean July? A. No.

Q. This money was borrowed when? A. July 10th, 1908.

Q. Less than a month afterwards? A. Yes, sir.

Q. By the way, when was your June meeting run off? A. I think June 17th to July 5th.

Q. June 17th to July 5th? A. I will give it to you accurately; I don't remember dates. June 23rd to July 8th.

Q. June 23rd to July 8th? A. Yes, sir.

Q. So that you ran it after the bills became laws? A. Yes, sir.

Q. And did you sustain an enormous loss at that meet? A. We did; yes, sir.

Q. How much? A. I should say about \$200,000; I should say a loss of about \$200,000.

Q. The racing books will show that, won't they? A. This ledger here shows the amount that we added to the June meet; yes, sir.

Q. I am not speaking of the addition, the added amount? A. That is practically the loss as the money has been added, it is an outlay of the club.

Q. The racing books will show exactly what the income was at that meet and what the expenditures were? A. No, they will not.

Q. They will not? A. No, sir.

Q. Have you any books which will indicate that? A. This general account does.

Q. Will you tell me from this general account, the books that you have, how much the income was during the June meet? A. Yes, sir. I am sorry, but I have not got that statement covering just the June meet, I have not got it here.

Q. These racing books would indicate that, wouldn't they? A. No, sir, the general account would state it.

Q. What are these racing books, what do they consist of, how many books are there? A. The day blotter and the ledger.

Q. Only a ledger, don't you have an account for every meet? A. We have an account of every horse owner; it simply relates to the entries of horse owners and payments to horse owners.

Q. From the books that you have, then, the account, tell us what income was during the June meet? A. I can tell you; I will try to tell you; the June meet—I could strike off a balance from the ledger and find out; it would take me some time to do it.

Q. I do not want you to stop to do it now. A. I will take a memorandum of it.

Q. Can you tell me the expenses you had to incur during that time? A. I have not got it handy; I will bring it down this afternoon.

Q. You will do that? A. Yes, sir.

Q. And show me how you arrive at the conclusion that during that meet your association lost \$200,000? A. Yes, sir. For instance, our Spring meet, that was in 1908, receipts from gates —

Q. I prefer not to take up the Spring meet just now? A. Yes, sir.

Q. I want to ask you this, Mr. Schaumburg — A. I have got the two meetings, the Spring and Autumn meetings; they show the losses if you want them.

Q. Not now. Will you tell me, Mr. Schaumburg, whether this added money was contributed by your association prior to the passage of the anti-racing bills? A. The major portion of it was.

Q. You used to contribute to almost every meet? A. Yes, sir.

Q. For years and years? A. Yes, sir.

Q. So that the contributions made subsequent to the passage of the bills does not indicate that is was a loss sustained, does it? A. That is only a small portion, the added.

Q. The mere fact that you contributed what you call added money? A. Yes, sir.

Q. Does not conclusively show that the added money was the amount of the loss, does it? A. It does.

Q. Then, such contributions in the form of added money that you made before the passage of the anti-racing bills, also indicated losses? A. Well,—

Q. Well, were they losses? A. You can call it what you like; it is a payment by the Club, of course, and if the Agnew-Hart law had not been passed we would have taken in sufficient money to meet the added money expense.

Q. You do not seem to get the point of my questions. I asked you whether you had sustained any losses subsequent to the passage of the anti-racing bills and you said yes, that the amount of those losses was measured by the amount of the added money so paid. Now, I am directing your attention to the fact that before the passage of those bills you paid added money. I ask you whether the amount of the added money paid before the passage of these bills constituted losses sustained by your association, or were they simply expenditures which were subsequently made up? A. Well, call it expenditures.

Q. And isn't the same thing true of the added money that you paid subsequent to the passage of these bills? A. Yes, expenditures.

Q. So that really to arrive at any losses if you sustained any after the passage of the bills, you would have to go through your accounts, and the amount of the added money does not indicate your losses if there was a loss, now, does it? A. The added money alone?

Q. Yes. A. No, it does not give it, because we had other payments.

Q. Now, I want you to go back to the question of the loan of the

\$200,000 from the Farmers Loan & Trust Company made in July, 1908. Now, after we have gone over this added money business and the losses, can you now tell us whether your memory has been refreshed as to the necessity for this loan at that particular time? A. As I told you a little while ago, we had to meet the payment of \$178,000 to meet the obligations incurred by the Coney Island Jockey Club in payment of this added money to stakes and purses; it had to meet payments for the maintenance of the track, for the running of the track, for the meet expense, such as policing the grounds, appointing of the officials, printing of badges, programmes and so forth; also we had our salaries, taxes, miscellaneous expenses, advertising stakes, printing and stationery, legal expenses, insurance, rent, premiums to county fairs.

Q. Are you through with your answer to that question? A. Yes, sir; and pardon me, also building improvements.

Q. Did the club at that time have any money in bank? A. It did, yes, sir.

Q. How much? A. Can't you tell nearer from the cash book here. On July 1st I find that you had in bank \$394,124.96, as against which you had made these expenditures? A. No, that does not show the cash balance; that is the total of the cash.

Q. Against that, if you deduct expenses that will give you the amount of cash, wouldn't it? A. Yes, one hundred and seventy odd thousand dollars.

Q. One hundred and seventy odd thousand dollars you had in bank? A. That includes the balance in the Knickerbocker which we could not draw on.

Q. How much was that? A. \$119,000 I imagine at that time.

Q. In July? A. Yes, I can give it to you accurately; but we could not draw on that.

Q. This added money is paid in what form, by check? A. By our check, yes, sir.

Q. To whom? A. To the various horse owners.

Q. This is entered in your book as a payment to the Coney Island Jockey Club? A. Racing account, yes, sir.

Q. To the racing account? A. Yes, sir.

Q. Then the added money you draw from the general account and place it in the racing account? A. Yes, sir.

Q. So the distribution of it will be found in the racing account, will it? A. Yes, sir.

Q. Will you please bring down your ledger, the racing account ledger? I should like to see how this \$178,000 was distributed; will you? A. Yes, sir.

Q. And also I presume that the same ledger covers the subsequent payments of added money? A. Yes, sir.

Q. Of 1908 and 1909? A. Yes, sir.

Q. Now, Mr. Schaumburg, will you return at 3 o'clock please? A. Yes, sir.

Q. And may I have the use of these books in the meantime; I want to go over them; I have had very little opportunity, as you know, to look into them. Is there any objection to my seeing these books in the meantime? A. I cannot leave them out of my custody; I will stay with you.

Q. Will you go and get those other things and meet me at my office at 55 Liberty Street at 2 o'clock? A. 2 o'clock, yes, sir.

CORNELIUS O. HENDRICKS, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Mr. Hendricks, where do you reside? A. Brooklyn; 148 Sixth Avenue, Brooklyn.

Q. What is your business? A. Bookkeeper.

Q. For whom? A. Mr. James R. Keene.

Q. Are you also his secretary? A. I have been for a year and a half.

Q. Where are his offices? A. 30 Broad Street.

Q. The Committee has been endeavoring to serve a subpoena on Mr. Keene for the purpose of having him attend and testify before the Committee in relation to a matter which they are investigating. Can you tell us anything about his whereabouts? A. I can, yes, sir. Mr. Keene was taken sick in Kentucky about the 2nd or 3rd of September, and left here and went down to the farm, he had pleuro-pneumonia, he was there for two weeks or three weeks maybe, and came up to New York for ten days as soon as he was able and he attended to a little business here, and his doctor advised him to go out of town for his health, which he did; subsequently he did not get

any better and the doctor advised him to take a trip to Europe, where he now is.

Q. When did he return to New York from Kentucky? A. About the 15th or 16th of September, maybe a little later.

Q. How long was he in town? A. I could not tell exactly.

Q. About how long? A. A couple of weeks maybe.

Q. Was he at his office every day? A. No, sir, he was sick at the hotel part of the time.

Q. What hotel? A. Waldorf Astoria.

Q. Was he at his office at all? A. Yes, sir.

Q. How frequently? A. Well, that I don't know.

Q. How frequently did you see him there? A. I used to see him every day whether he was down town or up town.

Q. How many days did you see him at his office? A. That I could not say because I don't remember.

Q. About how many days? A. I saw him every day he was down here; I don't remember how many days he was down there.

Q. What I want to get at is how many days was he down at his office after he returned from Kentucky, can't you tell me? A. No, sir.

Q. About how many days? A. I cannot tell.

Q. Was he down one day? A. Yes, sir.

Q. Was he down twice? A. It might have been a week; not every day, but between.

Q. Was he down three different days? A. Yes, sir.

Q. About how many days do you think he was down there? A. I don't know exactly.

Q. You were his secretary and saw him every day? A. Yes, sir.

Q. How frequently did you see him at the Waldorf and how frequently at his office; it is not difficult to tell, is it? A. It certainly is, I don't remember; I saw him down town and at the hotel.

Q. Did you see him more frequently at the hotel or more frequently at his office? A. It was about even.

Q. Then we have got it down to the fact that he was down to his office about half the time, is that correct? A. About that.

Q. What time did he usually come down to the office? A. About 10 o'clock or quarter of ten.

Q. How long did he remain? A. Sometimes 4 o'clock, 5 o'clock, sometimes 3 o'clock.

Q. When did he leave town again, can you tell me the date approximately? A. When he left?

Q. Yes. A. It was somewhere around the 1st of October, I think.

Q. And where did he go to then? A. Atlantic City.

Q. How long did he remain at Atlantic City? A. He remained at Atlantic City until the 2d of November.

Q. Where did he go on the 2d of November? A. He sailed for Europe.

Q. In what steamer? A. The Frederick der Grosse.

Q. For what port? A. Berlin — Hamburg at least.

Q. When did you last hear from him? A. To-day, by cable.

Q. Where was he when you heard from him? A. The Carleton Hotel, London.

Q. When do you expect him to return? A. That I could not say; he might never come back.

Q. Has he ever intimated to you when he expected to come back? A. No, sir; his sickness is very serious and his doctor advised him — I have got a copy here of his certificate, that was given to Referee Dexter, in charge of the bankruptcy.

Q. I do not ask for that; just continue with your answer. A. Yes, sir.

Q. The doctor advised him, you say — A. Yes, sir.

Q. To do what? A. To take a trip to Europe.

Q. The doctor advised him to take a trip to Europe? A. Yes, sir.

Q. And you do not know when he will return? A. No, sir. As soon as his health is better, so he is able, I suppose he will be back.

Q. Will you do the service for the Committee of communicating with Mr. Keene to-day and say to him that the Committee is anxious to examine him in regard to a matter that they are investigating, and that if his health would permit him we would like to have him return and testify before the Committee? A. He cannot, because he is going to a sanitarium in Berlin.

Q. Will you give him that information? A. Yes, sir.

Q. And send me a memorandum of the fees for the cable? A. Yes, sir.

Q. And I will be very glad to remit it? A. Yes, sir, I will.

FRED C. WILLIAMS, called as a witness, being duly sworn,
testified as follows:

By Mr. KRESEL:

Q. Mr. Williams, what is your business? A. Residence manager, Title Guarantee Surety Company.

Q. And the Title Guarantee & Surety Company has an office where? A. 84 William street, New York.

Q. Are you in charge of its affairs in this city? A. Yes.

Q. And where is its home office? A. Scranton, Pennsylvania.

Q. Did your company give the bail bond for Frank J. Gardner? A. Where?

Q. In this city? A. Yes, sir.

Q. The Frank J. Gardner that I am speaking of is the man who was indicted for attempted bribery in this county. You understand whom I mean, do you? A. Yes, sir.

Q. How much bail did your company put up for Mr. Gardner? A. \$10,000.

Q. Now, you signed that bond, didn't you? A. As attorney in fact.

Q. As attorney in fact? And it was also signed by Mr. Allen? A. Yes.

Q. Who is this Allen? A. Resident assistant secretary of the company in New York.

Q. And under the law it requires the signature of the assistant secretary to make the bond good, doesn't it? A. Yes. That is right.

Q. Now, at whose request did your company put up the bail for Mr. Gardner? A. It was arranged, I believe, by his attorneys.

Q. With whom? A. Well, the original arrangements were made in Scranton.

Q. Well, I am speaking of the arrangements for the bond put up here; not in Scranton. Those were made with you? A. Yes, sir.

Q. And who made the arrangement with you? A. Mr. Henry J. Goldsmith.

Q. Henry J. Goldsmith? He is a lawyer? A. Yes.

Q. Anybody else with him when he made the arrangement with you? A. No, sir.

Q. And what were the arrangements? A. That we were to go to the Municipal Court and sign the bail bond when called upon that day.

Q. You were to get a certain fee for it? A. Surely.

Q. And were you to be secured in any way? A. We had already been secured.

Q. In what form was your security? A. Cash.

Q. How much? A. \$10,000.

Q. Who put it up? A. George T. Williams.

Q. Where is that cash now? A. Deposited.

Q. Where? A. I think that was deposited in the Farmers Loan & Trust Company.

Q. In this city? A. I do not mean the Farmers. I mean the Franklin.

Q. Franklin Loan & Trust Company? A. Yes, sir.

Q. You deposited it, didn't you? A. That was done at my request. I did not do it.

Q. You made the arrangement for it, I mean? A. Yes.

Q. Now, who handed you the money? A. It was handed to one of the employees in the office of George T. Williams.

Q. Who was George T. Williams? A. I do not know.

Q. Where does he live? A. I believe at Elmhurst, Long Island.

Q. Well, have you no record in your files which would indicate the address or business of the person who deposited \$10,000 with you? A. None at all.

Q. Did you give him a receipt for it? A. Yes, sir.

Q. Have you a copy of that receipt? A. You have a copy there.

Q. Do you mean this paper (exhibiting a paper to the witness)? A. Yes, sir.

Q. Is this a copy? A. Yes, sir.

Mr. KRESEL: Mark it, please.

(Paper so offered and identified was marked Exhibit No. 39 in evidence.)

Q. Who brought Mr. Williams to you? Mr. Goldsmith? A. No, sir.

Q. Who did? A. No one, that I know of.

Q. Well, you said that Mr. Goldsmith made the arrangement with you. Now, we come up against Mr. Williams. How did he

come into the case? A. The arrangements were made and the putting up of the cash was made at Scranton at the time, I suppose. You understand that there was a bail bond arranged for there prior to this.

Q. Well, do you mean that this money was originally deposited when the bail was given by the company in Scranton? A. Yes, sir.

Q. And subsequently the money was transferred to New York? A. Well, it was — it — the money never went to Scranton. The money was deposited here in our office.

Q. It was originally deposited here? A. Yes, sir.

Q. And remained here? A. Yes, sir.

Q. And when the bond was — A. (Interrupting) Now, wait a minute. Now, to be exact, it did not remain. We sent a cashier's check to Scranton, and afterwards they concluded that they would leave it here, so they returned it, and I made the deposit.

Q. But the money was originally handed to you by Mr. Williams, is that right? A. That is right.

Q. And he was then in company with Mr. Goldsmith? A. No, sir. Mr. Goldsmith was in Scranton.

Q. Well, Mr. Goldsmith had been to see you before Mr. Williams came? A. I beg pardon. Mr. Goldsmith made the arrangements in Scranton, and I presume that he sent word to this Mr. Williams to bring the money to our office. We knew nothing about that.

Q. Well, when Mr. Williams came, did you know who he was? A. I was in Scranton at the time.

Q. Then you do not know who brought the money, do you? A. That is, I did not see him; no. I know from my employes.

Q. And to whom did Mr. Williams hand the money? A. I cannot say whether he handed it to Mr. Allen or some other employe in the office.

Q. How many employes have you besides Mr. Allen? A. Oh, altogether, we have a dozen or fifteen.

Q. Is Mr. Allen here? A. Yes, sir.

Q. Well, you do not know what Mr. Williams' business is? A. I do not.

Q. But you think that Mr. Williams was sent there by Mr. Goldsmith? A. I presume so.

Q. Was the money delivered in cash? A. Yes, sir.

Q. And outside of giving Mr. Williams a copy of this Exhibit 39, he has no other receipt? A. He has the original.

Q. Well, he has the original, of which No. 39 is a copy. Now, you have seen Mr. Williams, haven't you? A. No, sir.

Q. Never saw him? A. No, sir.

Q. So that really the only way that you can tell that it was George T. Williams that brought the money is because his name appears in this receipt? A. Yes, sir.

Q. For all you know, it may have been somebody else? A. Yes, sir.

Q. Now, we want the man that got the money. Now, who is it? Is it Mr. Allen? A. I cannot tell you positively.

Q. Haven't you spoken to Mr. Allen to ask him? A. No, I have not.

Mr. KRESEL: All right. I will excuse you for a minute. Mr. Allen?

WRAY W. ALLEN, called as a witness, being duly sworn, testified as follows:

By Mr. KRESEL:

Q. Mr. Allen, are you the assistant secretary of the Title Guaranty & Surety Company? A. I am.

Q. Were you present at the office of this company at a time the deposit of \$10,000 was made in connection with Frank J. Gardner's bond? A. I was.

Q. Do you know when that was? A. It is the date of that receipt. I cannot give you the exact date.

Q. This receipt is dated the 14th of October, 1910? A. That is the day.

Q. It was about that time? A. It was that day.

Q. That is the time? A. Yes, sir.

Q. Now, before the money was deposited with your company had you made the arrangement for its deposit? A. No.

Q. Who had? A. The arrangements were made in Scranton with our home office.

Q. And you were notified of these arrangements? A. We were notified of these arrangements.

Q. Do you know Henry J. Goldsmith? A. I do.

Q. Did you see him in connection with this matter? A. No.

Q. Prior to the deposit of \$10,000? A. No.

Q. Subsequently? A. Yes.

Q. That is, you saw him when the bail was required in this county? A. Yes.

Q. Is that right? A. Yes.

Q. Now, who brought this \$10,000 to your office? A. A man who said his name was Frank T. Williams, or——

Q. (Interrupting) George T. Williams? A. George T. Williams.

Q. And did he come with any note of introduction from anybody, so that you knew who he was? A. No. He had nothing.

Q. Well, what did he say? A. He came in and said that he was the man who was to arrange for the deposit of the cash in regard to the Gardner bond.

Q. Well, did you at that time know anything about any Gardner bond? A. Yes.

Q. What did you know about it? A. I knew that a bond had been written in Scranton for bail for Mr. Gardner, and that it was required that an additional bond be given in New York county.

Q. Well, this deposit was made after the bond had been written in Scranton? A. Yes.

Q. That is, after your company had put up the bond in Scranton, then this deposit was made? A. Yes.

Q. And your company had no security whatsoever for giving the bond in Scranton? A. I do not know.

Q. Well, then, this man said that he was the man that was to put up the security? A. Yes.

Q. In what form did he put it up? A. In cash.

Q. Cash? A. Bills.

Q. \$10,000 in bills? A. Yes.

Q. And did he hand you the money? A. No.

Q. To whom did he hand it? A. He handed it to Mr. McGonigal.

Q. You were there and saw him do it? A. Yes.

Q. Mr. McGonigal handed it to you? A. Yes.

Q. And what did you do with it? A. I held it and made out this receipt.

Q. Yes, and then what did you do with it? A. Then we turned it to Mr. McGonigal, who took it over to the Windsor Trust Company and gave it to the cashier and received in return a cashier's check.

Q. Cashier's check. A. Yes.

Q. And what did you do with the cashier's check? A. Forwarded that to Scranton.

Q. Was that the arrangement you had made with Mr. Williams? That that was to be done? A. We made no arrangements with Mr. Williams in regard to that. He simply handed us the money.

Q. And you gave him a receipt? A. That is all.

Q. Who told you to make the receipt in the name of Williams? Well, that was a matter for us to decide. We simply said that we would give whatever receipt was desired and we suggested that it be made out in Williams' name, as the man who put up the money.

Q. Who suggested that? A. I did.

Q. Well, who made the arrangement that this certified check was to be obtained and sent down to Scranton? Did Williams? A. No.

Q. Really Williams was only a messenger, who brought the money there and gave it to you, and you gave him a receipt? Is that it? A. That is all.

Q. You made no arrangement with him whatsoever? A. None, except giving him a proper receipt for the money.

Q. Yes. Well, do you know who made the arrangement with your company for this bond? A. For the giving of the collateral?

Q. Yes. A. I do not.

Q. Do you know who made the arrangement for the giving of the bond? A. I do not. That was done in Scranton.

Q. Well, when you had your talk with Mr. Henry J. Goldsmith, subsequently, what was his position in the matter? Who was he? A. Well, I believe he was simply the attorney for Mr. Gardner here in New York county.

Q. Well, was Mr. Williams with him when he made the arrangement with you to transfer the money? A. No. He did not make any arrangement with us to transfer the money.

Q. Who did? A. No one. We simply did that in the course of business.

Q. Well, this \$10,000 was put up with you by Mr. Williams as collateral for the bond given in Scranton, wasn't it? A. No. For a bond to be given in New York county.

Q. Before you gave it? A. Before we gave it.

Q. How long before? A. Well, it was given a day or two later, I believe.

Q. Well, if this deposit was given you, were you to cover a bond that you were to give subsequently here, why did you get a certified check and send it down to Scranton? A. Now, I may be wrong about that. It may be that this——

Q. (Interrupting) Well, now let us get right, please. A. It may be that this was given before the bond was filed at Scranton.

Q. Now, isn't it the fact, Mr. Allen, that this \$10,000 was originally deposited with your company as security for the Scranton bond, and when that bond was released, and Gardner came back here and surrendered, the same security was kept by your company to cover the bond given here? A. Yes. That is right.

Q. Very well. Now, the money, then, was delivered to you by Mr. Williams? A. Yes.

Q. But you made no arrangement with Williams for it, did you? A. No.

Q. All you did to him was to give him the receipt? A. That is all.

Q. Now, it was Goldsmith that made the arrangement with you for the transfer of the security from the Scranton bond to the New York bond, didn't he? A. I have no knowledge of that.

Q. Well, who did make the arrangement? A. I do not know.

Q. Was it made with you? A. No.

Q. Was it made with Mr. Williams? A. Which Mr. Williams?

Q. This Mr. Williams. Your Mr. Williams? A. I do not know.

Q. Will you describe this Mr. Williams who delivered the money? A. Well, I should say he was a man about five feet nine or ten; and thick set; rather dark hair; dark moustache.

Q. Yes. About how old? A. Dark eyes, I should say. He was a man 38 or 40 years.

Q. Did I understand that he gave his address as Elmhurst, Long Island? A. Elmhurst, Long Island.

Q. What was the occasion of his giving you his address? A. That I do not recall. Just as a matter of ——

Q. (Interrupting) Where do you find a record of it? A. Well, I know that as a matter of fact. I have not any record of it. I simply know at the time, I think I asked him where he lived, or somebody, just as a matter of form, in taking this money.

Q. Don't you know what business he was in? A. I did not make any further inquiries.

Mr. KRESEL: I want to ask Mr. Williams another question, please.

FRED C. WILLIAMS, recalled.

By Mr. KRESEL:

Q. Mr. Williams, I understood you to testify that you made arrangements with Mr. Henry J. Goldsmith for the deposit of this security? A. No, sir.

Q. As collateral to the New York bond? A. Mr. Goldsmith telephoned to our office and wanted to know if we would be ready that day to sign the bond in New York county. I said that we would, with the understanding, of course, that the collateral that had already been placed would be applicable to the new bond.

Q. That is the understanding that you had with Mr. Goldsmith? A. Yes, sir.

Q. Of course you would not have signed the bond in New York county unless you had the collateral? A. That is right.

Q. Very well. Now, you never saw Mr. Williams? A. George T.?

Q. Yes. A. No, sir.

Q. And you never made any such arrangement with Mr. Williams that the money that he deposited as security for the Scranton bond should be security for the New York bond? A. No.

Q. Did you ever get any release from him? A. No.

Q. Well, then, Mr. Goldsmith was really the man that had control of this \$10,000, wasn't he? A. Well, I do not know that I am able to answer that. That is as near as I could come to it.

Q. Well, Mr. Williams, if George T. Williams should walk into your office and surrender the receipt of the 14th of October, 1910, would you give him \$10,000 in cash? A. Not until he was properly identified.

Q. Well, would you if he were identified, with this New York county bond outstanding? A. Oh, no, indeed.

Q. Well, what authority did you have from George T. Williams, who, according to your receipt, is the only person that you recognize as the owner of the \$10,000 — what authority did you have from him to take the money that he had put up as security to a bond over in Pennsylvania and put it as security to a bond here? A. He was not considered at all.

Q. You did not consider Mr. George T. Williams? A. No.

Q. I didn't think you did. Mr. Williams, you went to Scranton when this matter first came up, didn't you? A. Not on this matter. I happened to be there on other business at the time.

Q. Were you there when it came up, or did you go with Mr. Goldsmith? A. No. I was there. I did not know anything of Mr. Goldsmith or anything of this matter when I left New York.

Q. I see. But while you were in Scranton on other business you did meet Mr. Goldsmith? A. Yes.

Q. And who introduced Mr. Goldsmith to you? A. He was introduced to the management there by a Scranton attorney by the name of Charles O'Malley.

Q. And you were there, were you? A. Yes, sir.

Q. During the conferences? A. Only a portion of them.

Q. A portion of them? And Mr. Goldsmith made the arrangement for the giving of the bond in Scranton, didn't he? A. Well, yes.

Q. Yes. Now, isn't it a fact, Mr. Williams, that Mr. Goldsmith had the cold cash with him and deposited it right in Scranton? A. No, sir, it is not.

Q. It is not? Did he say then he would make arrangements by telephone to have someone bring the cash to your office here? A. The inquiry that was made of us is, what we would require to sign the bond.

Q. And you said "cash?" A. Cash. They wanted to know if it would be satisfactory to have the cash deposited in our New York office, and we said "Yes."

Q. Well, now, did Mr. Goldsmith then say that he would communicate with New York and have it deposited? A. I believe he did.

Q. With whom else did you have any communication in connection with this bond, besides Mr. Goldsmith? A. I do not understand. Mr. O'Malley was the only attorney in addition to Mr. Goldsmith who entered the proposition at all.

Q. I did not mean to confine my question to any attorney, but who else? A. There was nobody else that I know of.

Q. Nobody else communicated with you concerning the giving of this bond? A. Not that I know of.

Q. Well, Mr. Goldsmith wasn't ready with \$10,000 at first. Didn't he offer some other security? A. I think probably. This is rather a supposition on my part.

Q. No, I should rather not have suppositions. You were present there, and I wish you would give us your recollection? A. All I know is that we required the cash collateral.

Q. Didn't Mr. Goldsmith mention some names of very prominent citizens who would stand good for this bail? A. No, sir.

Q. Without putting up the cash? A. No, sir.

Q. Did he say who was interested in Mr. Gardner's case? A. No. I do not think we asked him; did not in my hearing, at least. So far as we were concerned it was a very simple proposition. We knew what we were going to get.

Q. Let me ask one other question. Did you ever get any letters from Mr. George T. Williams? A. No, sir.

Q. In connection with this bond? A. No, sir.

Q. Did Mr. Williams give you any authority to pay over this money to anybody else? A. No, sir.

Q. At no time? A. No time.

Chairman MERRITT: The Committee will stand adjourned until 3 o'clock this afternoon.

Recess until 3 P. M.

AFTER RECESS.

2:00 P. M.

AUGUST BELMONT, called as a witness, and being duly sworn, testified as follows:

Examination by Judge BRUCE:

Q. What is your name? A. August Belmont.

Q. Where do you reside, Mr. Belmont? A. New York.

Q. You are in business? A. Yes, sir.

Q. As a banker? A. Yes, sir.

Q. What racing association are you connected with? A. I am president of the Westchester Racing Association and chairman of the Jockey Club.

Q. Now, will you tell me what the Jockey Club is? A. The Jockey Club is a close corporation of fifty members, brought into being some ten years ago at the request of all kinds of men interested in racing, horse owners, proprietors of race courses included, who had an interest directly in the turf, and they asked a certain number of prominent men to take under their jurisdiction the rules of racing.

Q. It is incorporated, is it? A. Incorporated.

Q. It was organized about ten years ago? A. Yes, sir.

Q. Who are its present officers? A. I am the chairman, and Mr. James R. Keene is the vice-chairman, and Mr. F. K. Sturgis is the secretary and treasurer, honorary, that is.

Q. And is there also an executive committee? A. Yes, sir; that is, it is called the board of stewards.

Q. Of how many members is it composed? A. There are seven, I think.

Q. I suppose their names appear in the minutes of the Jockey Club, which we have had before us? A. Yes, sir.

Q. Now, what is the province of the Jockey Club; what was it organized to do? A. It was organized to supervise the proper conduct of racing, that is really what it was for, to prescribe rules.

Q. And does it gain its authority over the different racing associations by their consenting to submit to those rules? A. It did, in the manner I indicated to you. It was called into being by all those

who were interested in racing in the State of New-York, or elsewhere, because its jurisdiction extends beyond that, but its authority was fixed afterwards in the Percy-Gray law, which is now still in existence, and which provided that licenses issued by the Racing Commission should be granted on condition that they would conduct their races under the reasonable rules and regulations of the Jockey Club.

Q. And, of course, all the racing associations have conformed to the provisions of the statutes in that respect? A. They have, to the rules of the Jockey Club, which have all the force of law.

Q. How many racing associations are there in the State of New-York? Four? A. I don't know; I think there are seven.

Q. What source of income has the Jockey Club? A. They see to the collection of forfeits, on which they collect a percentage. Each member pays \$100 dues, and the various fines that are imposed. Although the fines are kept as a separate fund, for the benefit of disabled jockeys and trainers. They apply all the fines to that purpose.

Q. Are there any dues levied upon the members? Any fees? A. Yes; \$100 a year.

Q. Is there any contribution made from time to time by the associations to the Jockey Club, by the various racing associations, or are there any assessments levied by the Jockey Club on the various racing associations? A. No.

Q. Are all the expenses of the Jockey Club met out of these dues and payments that you have mentioned? A. No; I omitted one very important source of income. The Jockey Club owns and controls the stud book, the registration of all thoroughbreds, and that is a source of considerable revenue. It issues a gazette as well, the Racing Gazette, but I think that shows some deficit, but the stud book is a source of profit.

Q. Now, then, these funds are all expenses of the Jockey Club, and are paid, are they? A. Yes, sir; they are practically very small.

Q. It appeared here in evidence this morning from the books of the Coney Island Jockey Club that in 1908 an assessment of \$5,700 had been made upon them for legal fees to be expended by the Jockey Club; by what authority was such an assessment made, if you know, Mr. Belmont? A. That inquiry could not have been properly expressed. There is no such thing. There is no authority of that kind that can be exercised, but the racing associations have acted

through informal conferences if they had any mutual interest in the conduct of their legal affairs. You know that racing, just as in this particular instance, has been under a certain persecution; and the interpretation of the laws that have been passed from time to time, the Percy-Gray law itself — cases have arisen in the courts, and the racing associations and the Jockey Club have paid the counsel fees. For instance, we retained counsel at Albany, and, under the law, that is registered, and accounts rendered to the Comptroller, just exactly, and in those names. Under those circumstances, they divide. Sometimes it is certain members of the association, sometimes others. If it is heavy, a smaller assessment might not be asked, but it is purely voluntary; no possible pressure could be brought upon them, and it does not enter into the functions of the Jockey Club. Simply as representing their interest in racing, as they have felt at liberty to contribute their funds. I presume in that way, that entry must refer to something of that kind. I don't know; I cannot tell you. That is their assessment, and unless it was by mutual agreement, it was informal. Whenever they have discussed these things, it was not enforceable, it was voluntary.

Q. It was one of the functions of the Jockey Club to levy such assessments, or to receive such contributions? A. No, they had no right to do so officially.

Q. You speak of persecution, as in this instance. To what do you refer? A. I refer to this: I can say to this hearing, because to my mind it takes on almost the appearance of the ridiculous. I am called here to testify about something that it ought to be presumed I would know nothing about, nor do I. I wanted to ask if I may be permitted to in this connection, I want to ask the Chairman when my subpoena was issued, when the Chairman signed it, if it is a legitimate thing to ask.

Chairman MERRITT: I don't know.

The WITNESS: I am always perfectly willing to appear here, and an attempt was made to serve me in a roundabout way on the afternoon of Thanksgiving Day. The process server came to my office and represented himself as wanting to see me on legal business. I was very busy. I didn't know who he was. The chances were that on ordinary days I would not have been at my office at all. I had engaged my fare to go to Buffalo and the West, and some other

reason prevented my doing so. But I ran a great risk of not being served, and I felt very much aggrieved, because I felt possibly that my name might be used, as you have taken occasion to speak of some of my associates, as trying to evade service. Now, that is a reflection, and it comes under the head of what I call a persecution, because it presents me to the community as trying to evade the question, which I don't think any of the gentlemen that I am associated with wish to do. For instance, in Mr. Whitney's case I know that he transferred his stable to Europe. He has got large interests there at the present time. Perhaps you may not think so, but the International Polo Match is a matter of great concern to him, a matter of great concern and responsibility, that everybody is interested in. The challenges have all been sent, and I don't think that he could be expected to take a steamer and come out here to testify to you about some mythical dinner that took place, etc., that has been mentioned in the newspapers; and about some mythical sum, because I must say that the very amount of it, of a million dollars, makes it ridiculous, and I don't think he ought to be held up by counsel as trying to evade. Only in my case I feel that if I had been away now, as I might have been, it might be said that I was trying to evade service. As a matter of fact, I think that they were trying to evade me rather than I to evade them. That is why I used the word "persecution." It is a fact. If you will allow me to say, I think I will express myself about it, it comes to my mind — if you want to know, you have been asking about this mythical dinner. I know of a meeting which I can tell you about. I don't care to use the Senator's name, because I think it is not necessary. You will have to take my word for it. He was from up the State, and not of my party. But I happened to be in New York, and was with a friend of mine, and they both called at my office. We had a talk about various matters in ordinary conversation, and he touched upon racing. This was in 1908, in the month of February, I cannot recall the exact day, but I explained the subject to him, and he said that racing was being reputably conducted, and he was not in favor of the legislation proposed. But he said this to me: "These rumors about bribing the Legislature are rife, that they were in the newspapers," and I said there was talk at Albany about it; and he asked me if I knew anything about it, and I said I did not, but I said I could not answer for everybody who was

interested in racing; but I could answer for those associations with which I was connected, the Jockey Club and the Westchester Racing Association. Not only would they not approve of such a thing, but they would not do such a thing under any circumstances as long as I had anything to do with them. It was even unnecessary for me to say that, because my associates wouldn't. He told me that they would try to get men to make an opposition to the measures if that sort of thing went on. I said I couldn't stop it. But I called a meeting of the associations, I looked up the dates, and I cannot tell what they were, because those meetings, as I say, are informal, and they were either on the first day of February, or the 18th, or the 27th. But we were discussing this bill, and you will remember that there was an open opposition on the part of racing men to the measure. I went to Albany, finally, and attended an open meeting of the Committee on Codes, I think it was, in open chamber, and spoke in opposition to the measure, and tried to justify the proper conduct of racing, and so forth. My impression was that those who wanted to pass the measure were doing so in order to drive good men out of racing. And I called a meeting of the association and told them about it, and this very visit of this Senator was one of the suggestions that no appearance of that sort should be given. That gives the spirit of it, and, of course, I think that to ask racing men and men of standing in this community, to ask them whether they know anything about it, is tantamount to asking this, that they might consent, and I repelled that with a great deal of contempt.

Q. Is that all you have to say? A. Anything else that you want me to say?

Q. I know; is that all you have to volunteer? A. I don't know; something might suggest itself; it was only as you examined me that those questions suggested themselves.

Q. Is that all that suggests itself to you at present? A. At the moment; yes, sir.

Q. Now, the persecution that you refer to was the fact that you had been regularly subpoenaed by the process server of the Committee; was that it? A. No, sir; when I referred to that it was to show that I ran a great risk of possibly coming under your observation as being one of those who would evade you, and I wrote you, Judge Bruce, calling your attention, and you have told me about it —

Q. Your apprehensions are altogether unfounded; Mr. Belmont. There has never been any suggestion or thought on the part of the Committee that you were not willing to testify, on the slightest suggestion that your presence was needed? A. I am very glad to have you say that.

Q. And, so far as the examination of men who are presidents or officers of corporations or associations engaged in racing in the State is concerned, the Committee, in view of the fact, as you have suggested, that rumors have gone about the State that these associations did raise funds for the purpose of improperly influencing legislation, we thought it was doing the people of the State a service, and perhaps the associations a service, giving the officers of the associations an opportunity publicly to state the facts in relation to the matter; instead of being in the nature of a persecution, if I may venture a personal suggestion, I think it is in the nature of affording an opportunity to you and other members of the association of stating the facts publicly before the people and before the Legislature. There is no intention or thought of its being a persecution whatsoever. A. That view, coming from you, places a different phase upon it. I hope that will be the impression.

Q. Now, so far as Mr. Whitney — you have seen fit to mention his name — is concerned, and so far as Mr. Keene is concerned, each of them, I have reason to believe both, before they left this country, knew that their presence was wanted before this Committee; they each sailed, if I recall correctly, I may be in error, because we are unable to fix the date of sailing of one of them, but if our supposition is correct, after the fact was publicly known that their presence here was needed — if I knew the date of sailing of Mr. Whitney I could state definitely in regard to that, but in his case it is only a matter of supposition. Now, let us take up the thread of the examination as I was pursuing it, and, by the way, another suggestion comes to me: This Senator, when he talked with you, did he state any Senator up there had stated to him that he had been improperly approached? A. Oh, no; he did not say anything of that kind.

Q. Did not? A. He was just speaking of the general talk and atmosphere that had been created there.

Q. When these anti-racing bills were pending in the Legislature you spoke of one conference that was called; were any other confer-

ences held by the Jockey Club or any of the racing associations to which you belonged, by any of the gentlemen associated with them, with reference to what steps should be taken for the purpose of presenting to the Legislature the views of the associations or of these gentlemen with reference to these measures? A. I have stated there were three meetings at my office and one at the Jockey Club rooms; that is, it followed the meeting of the Jockey Club, and they had reference to the legal steps they had taken and had been advised that we should take on the subject, and that was all openly done.

Q. Now, there was a meeting of the Jockey Club in which this matter was discussed? A. No, the Jockey Club — I said there was a meeting at the Jockey Club rooms that followed a meeting of the stewards. No, they do not discuss those matters other than if they are invited to help in paying counsel bills and fees, which are never very light, you know.

Q. Now, take these three conferences that were held, who were present at them, who were present at these conferences, do you recall, Mr. Belmont? A. No, I could not; there is no record kept of them, but I think, for instance, the Coney Island Jockey Club was represented by Mr. Parsons, and there is usually Mr. Andrew Miller, who, I think, represented the Saratoga Association, but when they cannot be present some other member of the board does, and I believe Mr. Engelman himself, or sometimes Mr. Hyde, if he was not there, he was counsel, and, for instance, Mr. Butler, would either be present or sometimes Mr. Soley, who was his counsel; if there was anything to be discussed, just as in this case, there were questions of law bearing upon it, etc.

Q. Did they decide at these conferences to take steps to present to the Legislature the views of the club and the racing association with reference to this bill? A. Yes, sir.

Q. And what steps did they decide to take? A. Well, it is too long ago to tell you exactly.

Q. In general? A. But it resulted in our going up there and attending this hearing, and we were represented by Judge Coyne, who, well, so badly presented this matter for us, and introduced such members of either the racing fraternity or whatever breeders there were — I believe there was one belonged to the Department at Washington, who was to inform the Committee as well as possible with regard to racing, etc.

Q. Now, Mr. Belmont, tell me about what funds were raised for the purpose of defraying those expenses and how the fund was raised? A. I cannot tell you how much Judge Coyne's compensation was there at Albany, I don't remember what it was, it was quite large; he was retained for two years, I think, and made his home there, and I don't remember, but in any event I should suppose that — well, that probably indicates that, that item in the Coney Island books, that probably would be paid by the others, too, but I have not come prepared to state anything of that kind, only it is within reasonable limits and it is for the very purposes that I told you, and legitimate and above board, and accessible to you in any possible way, and I want to say in this connection, Judge Bruce, that the accounts of the associations have always been public property; under the law they did, up to two years ago, have to pay five per cent. of their gross receipts, and consequently the Comptroller's representative examined them whenever he wanted at Albany, and they are open books, public books.

Q. Now, how were these funds assessed, an equal amount upon each racing association? A. Assessment is a wrong word for it; they agreed to divide equally, and the usual way to do this was the more prosperous ones, the Coney Island and the Empire City and the Westchester and Brooklyn, which represents both Brooklyn and Aqueduct, and, let me see, I don't know whether the Metropolitan at the same time did; the Brighton Beach used to, but afterwards it closed its gates.

Q. They were borne in equal parts, were they, these expenditures? A. Usually.

Q. By all the associations? A. Usually.

Q. I am speaking now with reference to funds raised in 1908? I could not tell you that, but probably; that was the custom. They met and decided on the expenses; they learned as well as they could what charges might be made, and then agreed to divide them.

Q. Was any suggestion made at any of these conferences or were there in fact any contributions made by various individuals towards the bearing of these expenses to which you have referred? A. No.

Q. They were all borne by the racing associations? A. By the racing associations.

Q. Was anything said there in relation to any part of the expenses

which should be borne by the Metropolitan Turf Association? A. No, nothing; we have nothing to do with them.

Q. They are entirely independent of the Metropolitan? A. They have nothing to do with the Jockey Club or associations whatever.

Q. Do you know whether or not the Metropolitan Turf Association did engage counsel or was represented on the hearings up there in opposition to those bills? A. I don't know; but you asked me about individuals; at one of these conferences, I don't know which, there was a large purse made for protecting the associations in any meetings; I recollect that it was one of the things that it was expected the attendance would be very small, and so the different horsemen agreed to subscribe to an underwriting fund to protect all the different associations against too heavy losses.

Q. Following the passage of the act, you mean? A. Yes, and that was held just as they did it this year, at Saratoga, but that is all I know about individuals ever doing anything at all, and that was open and well-understood, a certain percentage to the association, if it ran behind it was helped out by that fund.

Q. Now, were all the racing associations represented at some of these conferences; in other words, did they all assent to this proposition or plan of employing counsel and having them go up there and have a hearing in opposition to the bill? A. The fact that they paid their share, I presume it must be yes, that they did.

Q. That is the very fact I was trying to get at, whether or not all the racing associations did join in bearing their proportionate part of this expense? A. Well, I am quite sure that the principal ones; I say I cannot trust to my memory to be exact about that, but for all intents and purposes that was the fact.

Q. These contributions were entirely voluntary? A. Yes, sir, entirely.

Q. As you said, the Jockey Club had no power to levy any such assessment? A. None whatever.

Q. Who was to be the custodian of this fund, do you recall? A. It depends; sometimes I did it.

Q. Take in 1908; I have that in mind? A. I do not recollect; I do not recollect whether the Jockey Club cleared that or not; I cannot tell you that, or whether it was through one of the associations; it would be just like individuals getting together and saying, one of them, "I will attend to that, and you send me your check."

Q. Checks were to be sent, I presume, by the treasurers of the different associations? A. That would be the way; yes.

Q. And do you recall, what is your recollection now, that those checks were to be sent to the treasurer of the Jockey Club, and the Jockey Club was to be the custodian of this fund? A. No, I do not recollect that; I cannot tell you; but it is immaterial; whatever way it was done it is accessible and perfectly open.

Q. I just want to get track of it, you know; perhaps that is the shortest route to get the person who was the custodian, that is all, if it were the Jockey Club? A. I do not remember how that was at all.

Q. How long have you been an officer, Mr. Belmont, of the Westchester Racing Association? A. Nine years, I think.

Q. You were the president in 1908? A. Oh, yes.

Q. Do you recall how much they contributed towards this fund? A. No, I do not.

Q. Who would know? A. My treasurer.

Q. What is his name, please? A. Coakley.

Q. Do you recall his first name? A. J.

Q. Where does he reside? A. He is in my office; the books are there.

Q. Is there anything further that you wish to say, Mr. Belmont? A. Nothing at all that I can think of, other than I thank you very much for making it clear that there is no intimation of that kind to rest upon us, and even what I have said about Mr. Whitney is the fact, although he might have his engagements, certainly, because of the absurdity of it; I mean from our standpoint it is absurd, and I think that a great many people think so, too.

Q. When did you last see Mr. Harry Payne Whitney, Mr. Belmont? A. Oh, I don't know, it must be a couple of months ago.

Q. Did he say anything to you at any time as to whether or not he had learned that his presence was desired by the Committee? A. No.

By Assemblyman FOLEY:

Q. Did the racing associations file any statement of the expense incurred in opposing this legislation at Albany under the Legislative Law? A. Yes, sir.

Q. Did they show in detail the payments made by them? A. I cannot tell you how that was; I presume that was done by Judge Coyne himself; I know that that was complied with.

Judge BRUCE: That is all, Mr. Belmont.

WILLIAM H. REYNOLDS, called as a witness, being duly sworn, testified as follows:

By Judge BRUCE:

Q. Where do you reside, Senator? A. 648 Second street, Brooklyn.

Q. And your business? A. Real estate.

Q. You were at one time a member of the Legislature? A. I was; yes, sir.

Q. During what term? A. 1894 and 1895.

Q. Have you been connected as an officer with any of the racing associations of the State? A. Yes, sir.

Q. Which association? A. The president of the Metropolitan Jockey Club.

Q. How long have you been president of that club? A. Since its inception, about six or seven years.

Q. Who are the other officers? A. Adrian F. Jackson, Joseph Huber, George F. Dobson and myself, and Ex-Senator McCarren; he was also a director.

Q. And what office did each one of those gentlemen hold, if you will tell us? A. I was president; Mr. Huber, vice-president; Mr. Dobson was secretary and treasurer; the other two were just directors.

Q. Where are the tracks of this association located? A. Located in South Jamaica, within the limits of New York city.

Q. It is still in existence and still holding races, is it? A. Well, it is still in existence, but we have not held any races for more than a year.

Q. Did you hold races until last year? A. No, no races last year.

Q. No racing in 1909 or 1910? A. None whatever. Pardon me, sir. The Agnew-Hart bill passed in June, 1909?

Q. 1908. A. None in 1909 or 1910.

Q. Now, you have heard the testimony of Mr. Belmont here with

reference to the contribution made by the various racing associations towards a fund which was to be used for the purpose of presenting the views of racing people to the Legislature with reference to what was known as the anti-racing bills? A. I have, sir.

Q. Did your association make a contribution? A. It did.

Q. How much? A. I have a statement of the contributions we have made in the last three years, and I also brought along the checks and the vouchers. In 1907, to Mr. Sturgis, treasurer, \$2,391.30.

Q. Mr. Sturgis was treasurer of what? A. Of the Jockey Club, I believe; I am not a member; the checks were made to his order as treasurer; that was in August. In December, also, to Mr. Sturgis, \$9,941.28. January 31st, 1908, to the Jockey Club direct, \$2,586.04. February 26th, 1908, to C. J. Fitzgerald, \$3,412.37.

Q. Who was Mr. Fitzgerald, if I may interrupt you there? A. I think he was at that time the manager of the Brighton Beach Racing Association.

Q. And was he also a member of the Jockey Club? A. I do not think so; no, sir.

Q. What was this payment made for? A. As I understood it, it was made for special legal fees and publicity, and also the expenses, the proportionate part of the expenses our association was to pay for the special train to Albany, and all those details.

Q. And what was the date, please, again? A. February 26, 1908.

Q. Proceed, Senator, if you will. A. September 12, 1908, to P. J. Britt, \$375. September 12, 1908, to E. P. Coyne, \$519.37. September 12, 1908, to E. P. Coyne, \$2,265.82. March 15, 1909, Jockey Club, \$4,285.71. March 15, 1909, to F. K. Sturgis, \$4,591.10. May 29, to A. Daingerfield, \$568.30.

Q. These contributions that were made to the Jockey Club were made for what purpose? A. For special legal expenses to have counsel appear before the committee, for disbursements such as I have stated, to have various members of the racing fraternity like the breeders to come to Albany and appear for us, and I understand there was quite some money spent on publicity; by publicity I mean, the newspapers would not give the racing associations what was considered a fair hearing, and so I understand space was paid

for up the State through various newspapers, and the racing side of the question was published, and I think there was quite some expense attached to that.

Q. In the nature of direct advertising through the newspapers?

A. Yes; sir.

Q. Now, all the expenses that you have spoken of, or payments and expenses, were made for purposes related to the anti-race track legislation, were they not? A. Well, no — yes, I would say all were; the first year, of course, there was no active anti-legislation. I think the year 1907, when Judge Coyne and Mr. Britt represented the association, I believe that year there was no active legislation.

Q. What was this payment of \$9,941.28 on December 2, 1907. to Mr. Sturgis for? A. For the same purpose.

Q. That is in connection with the anticipated anti-race track legislation? A. I would not say it was anticipated; it may have been already expounded; it was our proportionate part; as I understand it, and understood it at some of the hearings at which I was present, the associations paid, and we agreed to pay our proportionate part of the expenses according to the number of days' racing that each association had formally received. Some would pay more than others, and these were our proportionate parts, taking into consideration the number of days we had received as compared to the larger and older associations.

Q. Were any other payments or contributions made by the Metropolitan Racing Association other than those you have stated? A. None whatever.

Q. Did any member of your racing association, to your knowledge, make any contribution towards this fund which was for the purpose of placing the views of the association and racing men before the Legislature relative to this legislation? A. No, sir.

Q. You were well acquainted, were you not, Senator, with a great many Senators in the Legislature of 1908? A. No, sir, I was not.

Q. Did any member of the Legislature of 1908 ever suggest to you that it would be wise for the racing associations to raise a fund for the purpose of taking care of their interests before the Legislature? A. None, sir.

Q. No Senator came down to see you? A. No, sir.

Q. No Senator came down to see you whatsoever in regard to the matter? A. No, sir.

Q. Then these payments, beginning with August 3, 1907, ending with May 2, 1909, amounting to — A. It is about \$33,000.

Q. \$32,936.30 were the entire contributions made by your association? A. Yes, sir.

Q. You have the vouchers. May I look at the vouchers, Senator? A. Why, surely.

Q. Do you remember how many associations were members of the Jockey Club; say, during the year 1908? A. We were not members of the Jockey Club, we were somewhat under their jurisdiction; there were eight, sir; eight associations.

Q. Do you know whether they contributed or paid their contribution to this fund? A. I am quite sure they all did until the Brighton Beach closed its gates, and I think that was in 1909, and I do not believe they paid their proportionate part of the expenses for that year, sir; it was then divided by seven in the same pro rata that I mentioned before.

Mr. KRESEL: Mr. Kavanaugh, please.

JAMES J. KAVANAUGH, called as a witness, being duly sworn, testified as follows:

By Mr. KRESEL:

Q. What is your address, Mr. Kavanaugh? A. 214 East 22nd street.

Q. And what is your occupation? A. President of the Mutual Milk & Cream Company.

Q. President of the Mutual Milk & Cream Company? A. Yes, sir.

Q. Where is its place of business A. 214 East 22nd street.

Q. The business of the Mutual Milk & Cream Company is the buying and selling of milk at retail? A. Yes, sir; wholesale and retail both.

Q. Wholesale and retail? A. Yes, sir.

Q. Mr. Kavanaugh, do you know of the existence of an association known as the Milk Dealers Protective Association? A. Yes.

Q. Has that association more than one branch? A. That I do not know.

Q. Was your company at any time a member of the Milk Dealers Protective Association? A. One of our employes was a member; the company was never a member.

Q. That is, you were represented in that association by one of your employes? A. Yes, sir.

Q. And who was that employe? A. Mr. Arnstein.

Q. What is his first name? A. Henry.

Q. Mr. Henry Arnstein? A. Yes, sir.

Q. Is Mr. Henry Arnstein an officer of the Mutual Milk & Cream Company? A. No, sir.

Q. Just an employe? A. He is a member of our board of directors at the present time; he is not an officer.

Q. Is Mr. Arnstein now a member of the Milk Dealers Protection Association? A. Yes.

Q. Now, what is this Milk Dealers Protection Association; what is the business of it? A. Its principal interest is to look after the collection of our cans; we lose an enormous amount of them every year.

Q. The principal business is to locate lost milk cans? A. Yes, that is what it was organized for.

Q. That is its principal business? A. That is its principal business.

Q. What other business has it? A. That is all I know of that it has; they have a wagon or some wagons going around all the time collecting these stray and lost cans and delivering them to the various members of the association.

Q. Well, did the Mutual Milk & Cream Company pay any dues to the Milk Dealers Protection Association? A. Yes.

Q. And were those a stated amount of dues every year? A. No, they occasionally asked for a subscription or a donation or something of that kind.

Q. They occasionally levied an assessment, isn't that it? A. An assessment, yes.

Q. And were those assessments large in amount? A. I think they were something like \$500.

Q. \$500? A. Yes, sir.

Q. Now, take it in the year 1909, did your company pay any assessment to the Milk Dealers Protection Association? A. Yes.

Q. And how much did your company pay in that year? A. \$500.

Q. Is that all? A. That is all.

Q. Just \$500? A. That was all.

Q. To whom was it paid? A. It was paid to Mr. Arnstein.

Q. That is your company gave it to Mr. Arnstein? A. Yes.

Q. In the form of a check? A. I do not recollect whether it was a check or not.

Q. Did you authorize the payment of it? A. Yes.

Q. How were you notified by the Milk Dealers Protection Association that such an assessment had been levied? A. We were notified through Mr. Arnstein.

Q. Through Mr. Arnstein? A. Yes.

Q. And did Mr. Arnstein tell you for what purpose this assessment was levied? A. Yes, part of it was for the collection of our cans, and part of it was, as I understood, to test the constitutionality of the Solids Law.

Q. What is the Solids Law; what law are you talking about? A. Well, we and other dealers have been fined for having milk in our possession that does not contain 12 per cent. solids, whereas we find that in a great many cases, particularly with Holstein, the cattle only give about 11.50 per cent. on an average, and we thought it was very unfair, and I personally wanted it carried to the highest court in the State to see if it was constitutional.

Q. When was this law passed that you speak of requiring you to have milk having 12 per cent. in solids? A. I believe that has been in existence for years; I don't know how long; longer than I am in business.

Q. So you understood from Mr. Arnstein that one of the purposes for which this assessment was levied was to test the constitutionality of that law? A. I requested that part of the fund be used for that purpose if it could, because it would be too expensive for us to do it alone.

Q. You did that after the assessment had been levied? A. I made that request when paying.

Q. When you paid it? A. Yes, sir.

Q. But after the assessment had been levied? A. That is in case we had a sample taken which was under 12 per cent. that it be carried to the highest court.

Q. Was there anything said to you by Mr. Arnstein with reference to an effort to be made to repeal that law? A. No, sir.

Q. Requiring the milk to have 12 per cent. solids? A. No, sir.

Q. So you did not understand that this \$500 was in any way to be used to promote legislation in that direction? A. No; I understood it was to fight the constitutionality of the existing laws.

Q. Well, was it to fight the bill that was then pending before the Legislature? A. I do not know that there was any bill then pending. I do not believe that there was.

Q. Was there not a bill pending in the Legislature during 1909, concerning the amount of solids to be contained in milk and cream? A. There was a bill afterwards passed, but I did not know at that time if it was pending.

Q. And when was it passed? A. I do not recall.

Q. It was passed subsequent to your contributing the \$500? A. No. It was passed after.

Q. Yes. After you contributed the \$500? A. Yes.

Q. Well, then, Mr. Kavanaugh, didn't you understand from Mr. Arnstein that one of the purposes for which this assessment was levied was to fight the passing of that law? A. To fight the passing of it?

Q. Yes. A. No. It would be to our interest to have it passed if the cows did not give the required amount of solids.

Q. Was the bill passed subsequently? A. It was; yes.

Q. And did it make any alteration in the percentage of solids to be contained in the milk? A. Yes. It was reduced 11.50.

Q. 11.50? A. I was not interested in the passage of the bill. I thought if the cows give milk that was below the legal standard, why that class of cattle should be eliminated. I prefer to sell milk containing 12 per cent. solids than 11, if we can get it. There are sections of the country that give it.

Q. Then was it your understanding that this \$500 and other like assessments were to be used to favor the passage of that bill? A. No.

Q. Had no reference to that bill at all? A. No. What I wanted to get at was the constitutionality of the existing law at that time.

Q. Well, what steps did you take to see that the money that

you so contributed was used for that purpose? A. I did not take any further steps. I simply recommended that it be done.

Q. Did you understand that the Milk Dealers Protective Association was going to protest that law? A. I was informed afterwards that they were not.

Q. When you paid the \$500 did you understand they were going to do it? A. No. I recommended that that be done.

Q. Well, you said to Mr. Arnstein that you would like to see the law tested? A. Yes.

Q. Is that as far as you went in your recommendation? A. That is as far as I went.

Q. But you paid over your \$500? A. Yes.

Q. Well, they had been collecting cans for you before this assessment of \$500 was levied? A. Yes.

Q. And you had been paying regularly a certain amount for such service? A. Yes, but we would only pay fifty cents every once in a while for dues, and about eight or ten cents a can, I do not know what the amount would be for every can returned.

Q. But for that they did collect the cans for you? A. Yes, but that would not repay them for that trouble, because they had to keep horses and men, and it would not cover their expenses — so I was informed.

Q. Your information then was, when you paid the \$500, to the effect that that was to pay for collecting cans? A. Yes.

Q. And had nothing to do with the pending bill which was subsequently passed, and had nothing to do with the legislation that was then on the statute books? A. I had no knowledge that there was a bill pending then in the Legislature.

Q. It had nothing to do with the legislation which was then on the statute book, had it? A. No, sir.

Q. Mr. Kavanaugh, you were examined as a witness before Referee Brown in a proceeding that was instituted by the Attorney General last February? A. Yes.

Q. Do you recall being questioned in that proceeding about this contribution of \$500? A. Yes.

Q. Do you recall giving the following testimony:
I read from page 3325 of the record:

“Q. For what purpose did your company pay these assessments

to the Milk Dealers Protective Association? A. What assessments, Mr. Coleman?

"Q. Wasn't there one assessment of \$600 paid recently? A. No.

"Q. Does your bookkeeper know the assessments that were paid? A. I think we paid one of \$500. That was the only one was ever paid.

"Q. When was that paid? A. Sometime last summer."

The WITNESS: That would make the summer of 1909; yes, sir.

"Q. Do you know for what purpose that was paid? A. Why, they wanted some kind of a fund in their treasury. I believe they wanted to fight this law, this 12 per cent. law, where some cows didn't give it."

The WITNESS: That may not be the words exactly, but that is the meaning.

"Q. Is that the reason they explained to you they wanted an assessment from your company of \$500? A. Yes."

Q. Now, that testimony was true, wasn't it? A. Yes.

Q. There is no question about collecting cans there, was there? A. Yes. I think you will find that afterwards.

Q. Well, I will read on:

"Q. Who explained that to you. A. Mr. Arnstein.

"Q. And he had directions to turn it over to the Milk Dealers Protective Association? A. Yes.

"Q. Did Mr. Arnstein use this for the purpose of having a fund there to pay the losses of this dead wagon driven by Bleffert? A. He never mentioned the dead wagon.

"Q. Did he say that the other dealers that were members paid their proportion of the assessment? A. Yes.

"Q. Did he say the amounts of the other dealers that they paid? A. No.

"Q. Did you inquire of him about what the amounts were? A. I think he said we were to pay about 25 cents a can.

"Q. That was about the assessment according — A. According to the number of cans that were sold wholesale and some one day.

"Q. Did he say that Sheffield and Borden paid similar assessments? A. No, I understood they did not belong to it."

This is at page 3328:

"Q. Do you know who the officers are of this Protective Association? A. No; I do not.

"Q. Do you know what purpose it served? A. It was, as I understand, to have collections of cans.

"Q. Since that time it must have taken on other functions, if you say you contributed \$500? A. We are told that they wanted that to fight some of these cases. We have been fined by the State several times this summer. We had not more than the required amount of fat; that was deficiency in solids. I looked upon this as a social organization more than anything else. I told Mr. Coleman that I ordered Mr. Arnstein to resign in October, and he has resigned.

"Q. Did you have any discussion with anyone outside of Mr. Arnstein before you gave up this \$500? A. I believe I talked to the members of the executive committee.

"Q. What did you tell them it was for? A. To fight the bill.

"Q. Did they think it was a good idea? A. They did not like that. I think it had a tendency to make us resign, but we were asked for it."

Q. Now, what bill was it that this \$500 was contributed to fight? A. The meaning of that is it was to fight the case — to fight those cases in case they came up. I think that word "bill" is a misunderstanding, because I was not aware that there was any bill, and if such a bill was pending to reduce it, we would not fight it. I think that the word "bill" there is an error.

Q. Of course, by having passed a bill that reduced the amount of solids required, would do away with the other bill that required a larger amount of solids, wouldn't it? A. It would.

Q. So that, in that indirect way, you were fighting the bill that was then on the statute books? A. No. I did not know there was any bill before the Legislature.

Q. You see there was no testimony there given by you that any of this \$500 was to be used for collecting cans? A. Why, it was. It was given, part of it — it was given for that purpose.

Q. Well, was it ever used to test the constitutionality of this law? A. No, I do not think so.

Q. What has become of the money? A. I do not believe it was ever used.

Q. What has become of it? A. I do not know. Probably the treasurer of the association can explain that.

Q. Of what association? A. Milk Dealers Association.

Q. Have you inquired as to what has become of it? A. No.

Q. Have you inquired of Mr. Arnstein? A. I say no — I have inquired indirectly, and my information has been that it has not been used.

Q. Now, was that the only \$500 that your company contributed? A. No, we have contributed some since.

Q. You contributed an equal amount in 1910, didn't you? A. Yes.

Q. \$500? A. Yes. I think we contributed more than that, but I do not know the exact amount.

Q. How much more? A. Probably a thousand or fifteen hundred dollars.

Q. A thousand or fifteen hundred dollars in 1910? A. Yes.

Q. Now, what was that for? A. Part of it was also for the collection of cans, and I was informed that there was an association intended to fight the sale of loose milk in the city, which formed a large part of our business, and I donated part of it for the purpose of engaging counsel to fight that thing, in case it ever came up. That was the understanding.

Q. That is, to fight any attempt to prohibit the sale of loose milk? Is that it? A. Yes.

Q. And this payment of \$1,500 was likewise made to the Milk Dealers Protective Association? A. I am not sure. There was two or three payments made.

Q. Two or three payments of \$500 each? A. Yes.

Q. And were those made to the Milk Dealers Protective Association? A. Yes, sir.

Q. Also through Mr. Arnstein? A. Through Mr. Arnstein.

Q. And you have only a vague idea of the purpose for which you made these payments? A. No. That was the purpose.

Q. The purpose was anticipating an attempt on somebody's part to pass a law prohibiting the sale of loose milk? A. There was another milk association that wanted to discontinue the sale of loose or dipped milk in stores.

Q. Yes. A. And we wanted to protect ourselves against them.

Q. Well, was there any legislation introduced to — A.
(Interrupting) No.

Q. — prohibit the sale of loose milk? A. No.

Q. Have any steps been taken in that direction by anybody?
A. Not yet. Not that I know of.

Q. But you contributed \$1,000 or \$1,500 in anticipation of some such effort being made? A. Yes.

Q. And do you understand, Mr. Kavanaugh, that the other milk dealers contributed proportionate amounts? A. Yes.

Q. Through the Milk Dealers Protective Association? A. Yes. I was given to understand that.

Q. Now, can you give us, Mr. Kavanaugh, exactly the amount of money that you have paid for this latter purpose? you say it was two or three payments of \$500 each? A. That was the most it was.

Q. Your books will show, won't it? A. Yes.

Q. Payments were made by check? A. Yes, I think so.

Q. Through Mr. Arnstein? A. Yes. I think the check was made directly to the Milk Dealers Protective Association, if my recollection is right.

Q. Who is president of the Milk Dealers Protective Association?
A. I do not know.

Q. Who is the treasurer of it? A. I do not know, but I have been informed his name is Mr. Wetterhahn.

Q. Wetterhahn? A. Wetterhahn.

Q. He is secretary. Do you know who the treasurer is? A. No. I never attended any of their meetings.

Q. So that, if we understand you, Mr. Kavanaugh, up to the present time your company, the Mutual Milk & Cream Company has paid over fifteen hundred or two thousand dollars? A. Yes. Either one.

Q. Into the treasury of the Milk Dealers Protective Association, for the purpose of preventing any legislation which would do away with the sale of loose milk, and also for the purpose of testing the constitutionality of this 12 per cent. solid law? Is that right? A. No. Not for legislative purposes.

Q. Well, in what form did you understand an effort was to be made to prevent the sale of loose milk? A. I was informed that

there was a committee, known as the — I think the New York Milk Committee.

Q. The New York what? A. New York Milk Committee.

Q. Go on. What about it? A. Wanted all milk sold in bottles instead of cans.

Q. All milk sold in bottles instead of cans? A. Sold in bottles. Sold to consumers instead of to stores, and the greater part of our business was in selling milk to stores, so I have subscribed with the understanding that our interests would be protected there.

Q. Well, protected in what way? Who was there to prevent it? A. To fight this. I am not sure if I have the name right. I think it is New York Milk Committee.

Q. Well, who was trying to prevent the sale of loose milk? A. This New York Milk Committee.

Q. And how were they trying to prevent it? A. I do not know. They have held meetings amongst themselves, I understand.

Q. Well, they would not prevent you from selling loose milk by holding meetings? A. No. They only started to agitate the question.

Q. Well, how did you understand your contribution of \$1,000, or \$1,500 would assist you against the New York men, or Milk Committee? What was to be done with the money? A. To engage counsel to fight —

Q. (Interrupting) To fight what? A. To fight this other committee.

Q. Well, how fight, if the committee did not do anything but hold meetings? A. Well, we wanted to prepare for it, or the association, rather, wanted to be prepared for it.

Q. Well, how did you understand this New York Milk Committee would attempt to prevent you from selling loose milk? A. I was notified by the association that such was their intention, — through one of their members.

Q. Intention to do what? A. To try and prevent the sale of milk in the stores.

Q. Well, how? A. I do not know how.

Q. So you contributed one thousand or fifteen hundred dollars to the Milk Dealers Protective Association to head off any attempt on the part of this Milk Committee to prevent you from selling loose milk? A. Yes.

Q. Then by what means they were to prevent, you do not know?

A. No; I do not.

Q. Now, this money has not been spent, has it? A. Not that I know of.

Q. So that there is now in the treasury of the Milk Dealers Protective Association either \$1,500 or \$2,000 of your money?

A. As far as I know. No, there cannot be all, because there is a certain amount used for the collection of cans.

Q. You have been paying right along separately for the collection of cans? A. Oh, but not enough, so I am informed, to cover the collection of cans.

Q. You have been paying how much? A. Ten cents a can about.

Q. About ten cents a can? A. Ten cents, I believe. I am not sure, but I can get that information correctly. I think our Mr. Arnstein can give it correctly.

Mr. KRESEL: That is all. Mr. Arnstein?

HENRY ARNSTEIN, called as a witness, being duly sworn, testified as follows:

By Mr. KRESEL:

Q. Mr. Arnstein, are you connected with the Mutual Milk & Cream Company? A. Yes, sir.

Q. You are now one of the directors of that company? A. Yes, sir.

Q. Have you any other office with them? A. I am branch manager.

Q. Of which branch? A. 214 East 22nd Street.

Q. You are a member of the Milk Dealers Protective Association? A. Yes, sir.

Q. How long have you been a member? A. Oh, I believe the last ten years, I guess.

Q. Have you been a member there continuously, or have you resigned and rejoined? A. I have resigned and rejoined several times.

Q. Your present membership in that association is as representative of the Mutual Milk & Cream Company? A. Yes, sir.

Q. And that company pays your dues there? A. Yes, sir.

Q. Now, Mr. Arnstein, when was it that the first \$500 was contributed by your company to the Milk Dealers Protective Association? A. Well, I could not exactly remember the date, but it was contributed and it was paid by me.

Q. What year was it? A. Well, I do not know. It was paid in 1909—I believe 1909, I believe—that is my best belief.

Q. What? A. That is my best belief.

Q. And what was that contributed for? A. Oh, at that time it was contributed for collection of cans and they wanted to have a fund. What they called—it was called a special fund. They wanted it in case they needed any more money, if one wagon didn't do it. They wanted several more to go through the city picking up cans and one thing or another.

Q. Then it was all for that purpose of collecting cans? A. It started that way.

Q. Was it for that purpose? A. Exactly.

Q. Was it the only purpose? A. No. Not exactly.

Q. What was the other purpose? A. There has been a lot of trouble, you know, with this solid question. As you understand it is 12 per cent. of solids.

Q. Yes. A. And we deemed it very unfair matter for a man to find milk that stood 11.80, or 11.90, or 11.97. They fined us as high as 97, and we thought we wanted some law on that and have a bill drawn up by some counsel.

Q. And by law to reduce the percentage of solids required? A. Not exactly to reduce, but to have a fair bill; just what the milk showed.

Q. A bill repealing the one that required 12 per cent solids, and substituting some other percentage? A. Well, perhaps in that direction.

Q. Yes. And who informed you that \$500 was required for that purpose? A. Why, it was discussed at the meeting.

Q. The meeting of the Milk Dealers Protective Association? A. Yes, sir.

Q. Were you an officer of that association? A. Oh, yes, I have been.

Q. Well, in 1909, were you? A. At the Milk Dealers Protective Association?

Q. Yes. A. Oh, I believe I was chairman there a few times.

Q. In 1909? A. I guess they appointed me a few times as chairman, I believe.

Q. Chairman of what? A. Oh, just chairman for the committee. They had meetings, you know, and once in a while they would appoint some man —

Q. (Interrupting) To act as chairman of the meeting? A. Yes.

Q. And at one of these meetings it was discussed that a fund was required for the purpose you have specified? A. Yes.

Q. And you presided at that meeting? A. At that meeting I came when the meeting was over.

Q. Then you did not preside at it? A. No.

Q. How do you know, Mr. Arnstein, that an assessment was levied? A. Why, I came there and the meeting was pretty near through.

Q. So it was still going on, was it, but pretty near through? A. Pretty near over. I usually come late, and they told me what happened, and they says I will be assessed twenty-five cents for every can, and I told him, I says, I didn't think the boss would stand for it, but I will try it anyway, and I told Mr. Kavanaugh at the time that such and such was the case, and he says, "Nothing doing," and so finally, when I went the next week, I says I want that money, and he says I don't want to pay it, but by and by I got the money anyway and paid it.

Q. Who gave you the money? A. I do not remember whether Mr. Kavanaugh or the cashier. The cashier — either one of them gave it to me.

Q. A check? A. A check or cash — I don't remember it.

Q. A check? A. A check, well, I do not remember.

Q. Wasn't it cash? A. It may have been. That I could not say.

Q. And to whom did you give it? A. To Mr. Wetterhahn, the treasurer.

Q. Treasurer Wetterhahn, or secretary Wetterhahn? A. Yes, sir.

Q. And this \$500 was levied upon the twenty-five cents a can? A. Twenty-five cents a can, and the amount one sold one day.

Q. That is you were reckoned to sell about 2,000 cans a day? A. Yes, sir. That is it.

Q. And the other members of the Milk Dealers Protective Association were assessed upon the same basis? A. I presume so.

Q. How many members belong to this Milk Dealers Protective Association? A. Well, I could not tell you how many.

Q. Oh, about? A. Oh, may be fifteen, twenty — twenty or thirty. I do not know.

Q. Between fifteen and thirty? A. It might be thirty and it might be only fifteen. I could not say.

Q. Now, did you ever take part in any effort at legislation concerning the amount of solids that milk should contain? A. Well, it never got that far, Mr. Counsellor.

Q. Did you ever take any part in any such effort at legislation? A. No, sir, but it was spoken at the session. I spoke to that effect.

Q. Did you ever go to Albany in connection with legislation concerning milk companies? A. I went to Albany; yes, sir.

Q. How many times did you go to Albany? A. Once.

Q. And when was that? A. That was in — oh, on or before some time in April.

Q. Of what year? A. 1908 or 1909. It was either 1908 or 1909. 1908, I should say. 1909.

Q. Was that before you paid this assessment of \$500? A. I was not a member of the association then.

Q. Won't you answer my question. Did you go to Albany before you paid the assessment of \$500? A. Yes, sir.

Q. And what happened in Albany? A. Well, in Albany it was entirely a different thing altogether. It was practically a can question.

Q. Milk can question? What do you mean by that? A. There is a gentleman by the name of Scott, Senator Scott, had a bill in the Legislature which was to be that a man could not bring suit against anybody unless for a milk can, unless he brought it in his own county.

Q. Yes. A. And he met Senator Richardson, I believe was his name there at Albany. He is the gentleman that drafted this bill, I believe some odd twenty years ago, and we wanted him, if he could not give us some idea to have this matter stand as it was. As it was, it was good law, and we deemed it all right.

By **Assemblyman FOLEY**:

Q. What year was that? A. I believe it was 1909.

Q. Senator Scott?

By **MR. KRESEL**:

Q. Don't you mean Assemblyman Scott? A. Assemblyman Scott, probably; a little short man.

Q. Do you know what city or town he comes from? A. He lives right near Albany. Perhaps the gentleman over here probably can tell me.

Assemblyman FOLEY: Mr. Scott is a representative from Chenango County.

The WITNESS: He belongs at Bainbridge, I believe.

By **MR. KRESEL**:

Q. Well, what happened in Albany? A. We had Mr. Conover up there with us. He had on the trademark of our cans. He produced them to show different cans and different marks that we have had. Then Senators came in there and they heard our story — what we had to say — and that was all there was to it.

Q. Well, you wanted the bill repealed, was that it? A. No. No; we wanted the same as it was, and he wanted it repealed — the same man I mentioned — but I forgot. It was Scott, too, but what his name was, I forgot.

Q. That is, this Senator or Assemblyman had a bill pending repealing the law which required suit to be brought in the county where the damage occurred? A. Exactly.

Q. And all milkmen, you contended, wanted it to stay the same? A. Exactly.

Q. Well, what was the result of your visit? A. The result was it stayed the same.

Q. Well, now, who went up with you? A. Why, Mr. Beakes. H. C. Beakes.

Q. Who is he? A. He is a dealer in New York City.

Q. Well, what company is he connected with? A. Beakes Berry Company.

Q. Yes. Who else? A. George Slaughter.

Q. Who is he? A. He is with the Stevens Berry Company, in Brooklyn. Mr. Chris Vance. He has no company. He is in business with himself. Mr. — some man of the Orange County Milk Association. Mr. — I forget his name. Isaac Van Bummel of the Sheffield Dairy Company.

Q. Yes. A. Mr. Conover. John Conover of the Dairymen's Manufacturing Company, and I believe that is all. There may have been some more. I do not just recall their names at the present time.

Q. Well, now, you were informed after the meeting was adjourned, or while the meeting was still on, that any part of this \$500 was to be used to have new legislation concerning the amount of solids to be contained in milk that is sold? A. No, sir. At that time I was told that they wanted to have a special fund and that if there was any such work done, why we would want to have some money on hand to go ahead with.

Q. Go ahead with what? A. With this matter.

Q. What matter? A. To have a bill drawn and have it put before the Legislature and have the solids reduced from 12 per cent. to 11 1-2.

Q. Exactly. And was there such a bill drawn? A. No, sir.

Q. Was the money used for any such purposes? A. Not that I know of.

Q. Well, have you made inquiry? A. Yes, sir.

Q. And you find that the money has not been used? A. No, sir.

Q. Where is the money? A. It is in the treasury to-day.

Q. Who was treasurer? A. It is with Mr. Wetterhahn, the secretary. That is the man I paid it to.

Q. Of the Milk Dealers Protective Association? A. Yes, sir.

Q. How much of that fund is in the treasury? A. I could not say.

Q. How much was collected? A. I could not tell you.

Q. What? A. I do not know.

Q. Can you tell us about how much? A. No, sir.

Q. Well, now, since that first contribution of \$500, did you, on behalf of your company, make any further large contributions to the Milk Dealers Association? A. Yes, sir.

Q. How much? A. I paid one time \$500.

Q. Yes. A. And I paid another time — I do not remember how much I paid the next time. I believe a thousand dollars.

Q. \$500 and a thousand dollars? A. It was either \$800, or \$1,000; something like that.

Q. \$500, and again \$800 or a thousand dollars? A. Or a thousand, something like that.

Q. And when did you make these two payments? A. Oh, I could not tell you the date, but they were made this year.

Q. This year 1910? A. 1910.

Q. And to whom did you make these payments? A. All to Mr. Wetterhahn.

Q. In check or cash? A. I could not say. I believe one was in check, surely, and I think one time was in cash, but I make the payments; both.

Q. Were those made after this investigation by the Attorney-General? A. The thousand dollars?

Q. Yes. A. Or that \$800; yes; that was paid after the investigation.

Q. And the \$500 prior? A. I believe it was paid before that.

Q. Now, what were these payments made for? A. This last one you mean?

Q. I mean the second \$500, and the \$800 or thousand dollars? A. I can tell you that very briefly. There is a movement on now where the New York Sanitary Milk Committee wants to take the milk out of stores and wants it sold just in bottles only, which would be an awful calamity to our business if this thing went through, as they claim the milk sold loose contains so much more bacteria than the milk in bottles, and for this there is a meeting on now, I believe, at 12 St. Mark's place this afternoon, for that purpose.

Q. For what purpose? A. Well, to get explanation why milk cannot be sold in stores, as well as in bottles.

Q. Why it cannot, or why it can? A. Well, why it cannot.

Q. Well, you and your association are in favor of selling milk loose? A. Yes, sir.

Q. And this other association wants it sold only in bottles? A. Yes, sir.

Q. So that this money was contributed by your company to the Mutual Protective Association, or the Milk Dealers' Protective As-

sociation, to head off any such effort as preventing the sale of milk loose? A. Yes, sir.

Q. Well, now, was this other association to prevent you from selling milk loose? A. Well, the most of these millionaires are men that sell milk in bottles.

Q. What way were they to prevent it? What did they want to do? A. They are not to prevent it as yet, but they are condemning the way we do business. They want the milk sold in the city of New York the way they are selling, in bottles, and want to prevent us from selling loose in cans.

Q. What I want to know is, how do they propose to prevent it? By passing a law to that effect? A. Yes; not a law, but a city ordinance, if I understand it right.

Q. A city ordinance? A. Yes.

Q. So that if this money was contributed by your company to the Milk Dealers' Association to defray the expenses in an attempt to prevent the passing of such an ordinance? A. Exactly.

Q. Were you present at the meeting when the Milk Dealers' Protective Association voted to levy the assessment for that purpose? A. Yes, sir.

Q. And that was pretty well discussed, wasn't it? A. Yes, sir.

Q. Was Mr. Wetterhahn there? A. Yes, sir.

Q. He was the secretary? A. Yes, sir.

Q. Can you tell us the date when this was passed? A. Oh, recently. Why, it ain't so very long ago. I can't remember these little matters; dates and things.

Q. Well, as late as last July? A. I could not say. I think it was after that.

Mr. MENKEN: I would like to object that it is not in the Committee's power; a matter of city ordinances.

Mr. KRESEL: Objection is raised by Mr. Menken that I am going outside of the scope of the legislation under which the Committee is empowered to investigate. Is that your point?

Mr. MENKEN: Exactly. We are very anxious to have these questions before the Legislature, because we are oftentimes affected by the legislative situation, but this is an entirely different question and a very delicate and serious one, and I do not see why we have to go into it at this time.

Judge BRUCE: There is no appearance by counsel here, and no objection upon the record, and no ruling upon any objection.

Mr. MENKEN: We are entitled to a fair deal.

Judge BRUCE: That does not go to the question of a formal objection. If the counsel makes a suggestion to the Committee, it is different, but no formal objection can go upon the record.

Mr. MENKEN: I would like to have it made that way.

By Mr. KRESEL:

Q. Mr. Arnstein——

Judge BRUCE: (Interrupting). Just a moment. Mr. Chairman, I see no substance to the suggestion made by the gentlemen.

Vice-Chairman BROUGH: As I understand it the counsel has no right to appear for the witness anyway, and a suggestion made by counsel has no effect.

Judge BRUCE: But counsel suggests they are entitled to a fair deal, which is true. The scope of the powers of this Committee, under the resolution under which it is acting, certainly extends not only to funds which may have been raised for the purpose of defeating legislation heretofore, or passing legislation, but certainly refers to any funds which may be now being collected for the purpose of securing the passage of an ordinance or the passage of a bill or defeating it.

Vice-Chairman BROUGH: I think that is the opinion of the Committee:

By Mr. KRESEL:

Q. Mr. Arnstein, the first \$500 that was contributed by your company towards this latter purpose—you understand that is the selling of milk loose—was that the amount that your company was at that time called upon to pay? A. I beg your pardon. May I add something into your question. The first \$500 was not figured on. The last \$1,000 or \$800 that was paid was for this purpose now.

Q. Yes. We have the first \$500 that was paid last summer; in 1909; do you remember? A. Sometime; yes.

Q. That was for legislation concerning the percentage of solids?
A. I took it that way.

Q. That we are through with? A. Yes.

Q. Now, you tell me subsequently you paid another \$500? A. That was for collecting cans.

Q. And had nothing to do with either solids or with selling milk loose? A. No; had nothing to do.

Q. But the \$800 or thousand dollars was for this matter, purpose? A. Exactly.

Q. I see. Now, do I understand that the \$800, or \$1,000, that you contributed to head off any effort to prevent you from selling milk loose is still in the treasury of the Milk Dealers' Protective Association? A. So I understand.

Q. Has not been spent? A. Not to my knowledge.

Q. All the payments you made on behalf of your company you made to Mr. Wetterhahn? A. Exactly.

Q. Were you a member of any committee charged with disbursing these funds on behalf of the Milk Dealers Association? A. No, sir.

Q. You had nothing to do with that? A. No.

Q. Who had charge of disbursing these funds that you speak of?
A. I could not say.

Q. Well, was there an executive committee? A. I could not tell you anything about their business any more.

Q. You do not know whether your association have an executive committee? A. I believe they have an executive committee.

Q. Do you know who is on that executive committee? A. I could not say.

By Senator WAGNER:

Q. Do you know whether there was any legislation passed in this last session with reference to the quality of milk to be sold? A. Well, there was a bill passed and signed by the Governor, Governor Hughes, and the solids was reduced from 12 to 11.50, but I believe the farmers of this State wanted it themselves.

Q. So that there was a bill passed in this session of the Legislature reducing the amount of solids? A. I could not say if it was in this session. I know the bill was signed by Governor Hughes, reducing it.

Q. Was it this year that Governor Hughes signed that bill? A. It was probably three or four months ago.

Q. That was this year? A. As I understand, Dr. Lederle went up and passed the bill.

Q. Do you know this fund — was this fund used with reference to the passage of that bill, do you know? A. We intended it for that, but it appears —

Q. (Interrupting) Wait a minute. Wait. You say the fund which you collected was intended to be used for the purpose of passing this bill? A. I collected?

Q. No. The fund that was collected by the milk dealers was to be used for the purpose of passing this bill? Is that what you say? A. No, sir. The fund was collected and was intended for something of that kind; to have some legislation to have this reduced from 12 to 11 1-2 solids. It was intended to have a bill drawn and get counsel and have it go to the Legislature and see if they could not get it from 12 to 11 1-2, or have some fair standard of milk.

Q. And the bill for which your fund was collected was passed in the last session of the Legislature, is that right? A. I would not say it was in the last session. I think it was passed and Governor Hughes signed it.

Q. You said Governor Hughes signed it this year, didn't you, three or four months ago? A. Yes.

Q. Then it must have passed; I will tell you, for your information, in this last session of the Legislature? A. Well, I am not up in politics. I do not know.

Q. Well, did you attend any session at Albany, or any committee meetings in order to advocate this bill? A. No, sir.

Q. Or any member of your association go to Albany to advocate this bill? A. I could not tell you.

Q. Well, you say you knew that Dr. Lederle was up there? A. Well, that is long after the bill was passed, and I understood so by one of our men in the association, that Governor Hughes signed the bill, and Dr. Lederle told him that it would be worse for the dealers now after he signs it than it was before.

Q. Who did you say had this money that was collected for the purpose of having a bill of this kind drawn? A. Mr. Wetterhahn.

Q. And what he did with the money you do not know? A. Well, as I understand, he has it yet.

GUSTAVUS C. WETTERHAHN, called as a witness, being duly sworn, testified as follows:

Examination by Mr. KRESEL:

Q. Mr. Wetterhahn, where do you live? A. 533 East 88th street.

Q. Are you the secretary of the Milk Dealers Protective Association? A. Yes, sir.

Q. How long have you been secretary of that association? A. Thirteen years.

Q. How long has the organization been in existence? A. I think they first started in 1892. I don't know. I wasn't a member then. I think that was about when they first started, but they organized in 1895.

Q. They were incorporated in 1895? A. At that time; yes, sir.

Q. Are these the articles of incorporation of that organization (handing paper to witness)? A. Yes, sir.

Q. The certificate of incorporation provides that the objects of said incorporation are as follows: "For the social intercourse and mutual benefit of the members." Is that right? A. Yes, sir.

Q. And the association has by-laws? A. Yes, sir.

Q. Are these the by-laws (handing paper to witness)? A. Yes, sir.

Q. Now, Mr. Witterhahn, what has been the business of that association since you have been secretary of it? A. The business? Well, it wasn't in business at all; it was merely a social organization until it took up the collection of cans.

Q. It was a social organization until it took up the collection of cans? A. Yes, sir.

Q. When did it undertake the business of collecting cans? A. They first took them up in 1897, I think.

Q. In 1897? That is two years after this incorporation? A. Yes, sir.

Q. For the first two years of its business existence, then, it was a purely social organization? A. That is what it was.

Q. In what form were the social events — A. To establish a better feeling amongst the milk dealers.

Q. What did it do? Hold picnics? A. Yes, sir.

Q. Did it have anything to do with fixing the price of milk? A. No.

Q. Has it, since that time, had anything to do with fixing the price of milk? A. No, sir.

Q. At your meetings, did you discuss the milk situation? A. Oh, yes.

Q. From what point of view? A. It depends upon the time of year.

Q. In the spring? A. The flush, and the manufacturing price, etc.

Q. You talked about the manufacturing price? A. Yes, sir.

Q. Did you talk about the producers' price? A. What do you mean by the producer?

Q. The price paid to the producer? A. Yes, sir.

Q. The price you sold milk at? A. Yes, sir.

Q. The price that you sold it to the milkman? A. Yes, sir.

Q. The freight charged? A. Yes, sir.

Q. So that you did discuss the price of milk? A. Oh, yes, we discussed the price; yes, sir.

Q. In fact, that was done in every meeting? A. Oh, no; not at every meeting.

Q. Well we will come to that later. As secretary, did you keep any books of this association? A. Yes, sir.

Q. Are these the books (showing books to witness)? A. Yes, sir.

Q. Are these all the books you keep? A. That is all I have; yes, sir.

Q. These books commence in October, 1909, don't they? A. I think so; yes, sir.

Q. What has become of the books prior to that time? A. Them is destroyed.

Q. You destroyed them? A. Yes, sir.

Q. When? A. Soon after the yearly meeting in 1909.

Q. When was the yearly meeting in 1909? A. In October.

Q. Were they books similar to those (pointing to books on table)? A. No; they were smaller books.

Q. Smaller than those (indicating)? A. Yes, sir.

Q. Why did you destroy them? A. I had no room for them; I destroyed those with some of my own.

Q. They were smaller books than those, and took up so much room that you had to destroy them? A. It wasn't those books alone; there were my books, too.

Q. Why did you destroy those books? A. I didn't think I would have any more use for them.

Q. You destroyed them because you didn't think you would have any further use for them? A. Yes, sir.

Q. Those were permanent records of your organization, weren't they? A. What is that?

Q. Those were permanent records of your organization, weren't they? A. Minutes; yes, sir.

Q. Your organization is incorporated? A. Yes, sir.

Q. And you took the minute book of the institution for how many years of its existence? It was organized in 1895? A. Yes, sir.

Q. You destroyed the books in 1909, is that right? A. Yes, sir; soon after the yearly meeting.

Q. So that the minute book covered fourteen years? A. I wasn't secretary all the time.

Q. You were secretary how long? A. Thirteen years.

Q. You destroyed the minute book you kept? A. Yes, sir.

Q. Covering the entire period? A. Since I was secretary.

By Senator FOLEY:

Q. Was that just before the investigation by the Attorney-General? A. A long while before.

By Mr. KRESSEL:

Q. When did the investigation commence? A. I think in January, 1910.

Q. You knew long before that that there would be an investigation, didn't you? A. No, I did not.

Q. You didn't know long before that? A. No, sir.

Q. How long before did you know there would be an investigation? A. How long before I destroyed the books?

Q. Before January, 1910? A. I didn't know anything about it until December, 1909.

Q. When did you destroy them? A. Soon after the yearly meeting.

Q. How soon after? A. In October, 1909.

Q. You destroyed every book you had of the organization? A. I only had two.

Q. You destroyed the minute book? A. And the cash book.

Q. Did you destroy the can book? A. We had no can book then.

Q. Didn't you keep any record of the collection of cans for twelve years? A. No, sir.

Q. You were collecting the cans since 1897, weren't you? A. I know; but I didn't have nothing to do with it at that time.

Q. Who did? A. A man by the name of Ahlweier.

Q. When did you start keeping track of the collection of cans? A. In 1908.

Q. Is the record for 1908 and 1909 here? A. 1909 is.

Q. That is from October, 1909, isn't it? A. Yes, sir.

Q. After the year 1908, and after October, 1909, where is the record of the collection of cans? A. I didn't keep no record of the collection of cans then.

Q. Do you mean to say that all the cans that you collected and for which you charge your members ten and fifteen cents a can, that you kept no record of it? A. We didn't charge them in 1907 and 1908.

Q. Did you charge them in 1909? A. 1909? I think we did.

Q. Where is the record of those charges? A. I think that was in the old cash book, 1908.

Q. Now, the cash book that you destroyed after the annual meeting in October, 1909, that covered the record of your association for thirteen years that you were secretary; is that right? A. Well, not all the books were destroyed. I guess I had disposed of some part of them; that was the last books I had.

Q. At any rate, prior to October, 1909, you have no records of your association now? A. No.

Q. No other minute book, cash book, or check book, or anything of that sort? A. We had no check book.

Q. When, in October, 1909, did the the annual meeting take place? A. I don't remember the date.

Q. What was the date? A. I don't remember the date.

Q. Was it early or late in the month? A. Early in the month.

Q. Do you hold your annual meetings always in October? A. Yes, sir.

Q. Are you sure you destroyed these books in October? A. Yes, sir.

Q. What makes you so positive about it? A. Because I didn't think we would have any more use for them, and I had no place to keep them books, and I had some old books myself.

Q. What makes you so positive that you came to that conclusion immediately after the annual meeting? A. It was that month; I don't say it was immediately.

Q. What makes you positive it was that month; wasn't it in November? A. I don't think so.

Q. Why not? What makes you so positive it must have been in October, and you cannot tell us when the annual meeting took place? A. I cannot tell without looking in the book.

Q. You are sure it was in October that you destroyed them? A. Yes, sir.

Q. How did you destroy them? Did you burn them up? A. No, sir; I tied them up and put them in the rubbish.

Q. Did you throw them in the ash barrel? A. No; I tied them up with my own paper, and put them in the rubbish.

Q. Where in the rubbish? A. I put them in the area way where the rubbish man takes the papers, the Italian who gathers them up.

Q. You tied them up, did you? A. Yes, sir.

Q. So they would have a chance to get lost? A. I don't know whether they got lost.

Q. You left them in the area? A. Yes, sir.

Q. That is the last you have seen of them? A. Yes, sir.

By Senator FOLEY:

Q. Did they authorize you to destroy them at that meeting? A. I don't think they did.

By Mr. KRESEL:

Q. Mr. Wetterhahn, are you in the milk business yourself? A. No, sir.

Q. Have you ever been in the milk business? A. Yes, sir.

Q. How long ago? A. Eleven years ago.

Q. But as secretary of this Milk Dealers' Protective Association, you took a great interest in the price of milk? A. No, sir; I merely did the secretary work.

Q. As secretary of the organization you were interested in the milk situation in general, weren't you? A. I don't see how I am, if I am not in the business.

Q. You knew of the Attorney-General's investigation? A. At the time it was held; yes, sir.

Q. You were in the city then? A. Yes, sir.

Q. All during the investigation? A. I think so.

Q. Don't you know? A. I don't remember as I was out of the city.

Q. You would remember if you were away any length of time? A. Yes, I would know; I was away only at Christmas, three or four days.

Q. Were you away in the early days of this year — January or February? A. No, sir.

Q. You were not? A. No, sir.

Q. You recall, don't you, that early in the month of November, 1909, the newspapers in the city started what they called a crusade against the milk dealers on account of the sudden rise in the price of milk? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. You remember the early part of 1909? A. It was in November.

Q. Didn't you destroy the books right after that? A. No, sir; I had no reason to.

Q. You are sure of that? A. Yes, sir; before I knew there was going to be any investigation at all.

Q. Of that you are positive? A. Yes, sir.

Q. Before you knew there was any public agitation about the price of it? A. Yes, sir.

Q. You are positive? A. Yes, sir.

Q. Do you recall what day it was when the price of milk advanced in this city last November? A. When the price of milk advanced?

Q. Yes. A. No, sir.

Q. To nine cents a quart? A. No, sir.

Q. Don't you know it was about the first of November, last year? A. That they raised the price of milk?

Q. Yes. A. I know nothing about that.

Q. Wasn't it discussed at your meetings at all? A. No, sir; we have no retail dealers.

Q. You mean to say that in November, 1909, the discussions that usually went on at your meetings about the price of milk suddenly ceased? A. No, it didn't suddenly cease.

Q. There was a discussion about the price of milk then, too, wasn't there? A. Some retail dealers raising the price to nine cents. I don't know what talk was raised.

Q. It was in the month of November, 1909? A. I believe so.

Q. What books do you keep now, that is, that have not been destroyed? A. I keep the can bureau book and the cash book.

Q. You keep the can bureau book? A. Yes, sir.

Q. You have charge of the can bureau? A. Yes, sir.

Q. You keep the book of the can bureau? A. Yes, sir.

Q. And you keep the minute book? A. Yes, sir.

Q. And you keep the cash book? A. Yes, sir.

Q. You collect all the dues? A. Yes, sir.

Q. All the assessments? A. Yes, sir.

Q. The special dues? A. Yes, sir.

Q. You keep the moneys, do you? A. Of the special dues.

Q. Of the regular dues? A. No, sir.

Q. Who does? A. The treasurer.

Q. You keep the other dues? A. Yes, sir.

Q. Is this the minute book (handing book to witness)? A. Yes, sir.

Q. And is this your cash book? A. Yes, sir.

Q. And is this the can bureau book? A. Yes, sir.

Q. Are they all in your handwriting? A. Yes, sir.

Q. Now, tell me about these special dues, please. Your association levies special dues, is that right? A. Yes, sir.

Q. And on what basis are those dues levied? A. On the basis of so much a can.

Q. How much a can? A. 25 cents.

Q. 25 cents? A. Ten cents, twenty-five cents, fifty cents.

Q. The amount varies? A. Yes, sir.

Q. Between ten and fifty cents? A. Yes, sir.

Q. Has it ever been more than fifty cents? A. No, sir.

Q. Has it ever been less than ten cents a can? A. No, sir.

Q. And when you say that the assessment is 10 or 25 or 50 cents a can, do you mean each member is charged 25 cents for each can of milk that he sells on a certain day? A. Yes, sir.

Q. So that if a man is known to sell 2,000 cans a day, he pays on 2,000 cans, is that right? A. Yes, sir.

Q. How do you notify members of such special assessments or dues? A. Notify them by letter.

Q. Do you keep copies of those letters? A. No, sir.

Q. You have no copies of your correspondence? A. No, sir.

Mr. KRESEL: I think, Mr. Chairman, if we are going to adjourn at five o'clock, we had better adjourn at this point.

Chairman MERRITT: The hearing is adjourned to ten o'clock to-morrow morning, in the Aldermanic Chamber.

Adjourned until 10 A. M. November 30th, 1910.

TWENTY-SECOND PUBLIC SESSION OF THE LEGISLATIVE INVESTIGATING COMMITTEE.

ALDERMANIC CHAMBER, CITY HALL.

NEW YORK, November 30, 1910 — 10 A. M.

Present — HON. EDWIN A. MERRITT, JR., *Chairman*.

HON. VICTOR M. ALLEN.

HON. ROBERT F. WAGNER.

HON. FRANK L. YOUNG.

HON. JAMES A. FOLEY.

HON. M. LINN BRUCE, *Counsel*.

ALFRED HURRELL, ESQ., { *Assistant Counsel*.

HON. ISIDOR J. KRESSEL, }

CHAIRMAN MERRITT: The Committee will come to order.

GUSTAVUS C. WETTERHAHN, recalled.

Examination by Mr. KRESSEL:

Q. Mr. Wetterhahn, has the Milk Dealers Protective Association any branches? A. No, sir.

Q. Is there more than one organization of that kind? A. Not that is chartered, that I know of.

Q. Well, whether chartered or unchartered? A. Yes, there is one in Harlem.

Q. What is that known as? A. What is that?

Q. What is the name of it? A. The Harlem Milk Dealers' Association.

Q. Is it a protective association? A. No, sir.

Q. Is it called the Harlem Milk Dealers' Association? A. The Harlem and Bronx Milk Dealers, I think.

Chairman MERRITT: Is that a wholesale or retail association?

The WITNESS: Well, there is some part retail and part whole-sale.

Q. And isn't there a Bronx organization, too? **A.** No, this is Harlem and the Bronx.

Q. Just one organization? **A.** Yes, sir.

Q. What other milk dealers' associations are you the secretary of? **A.** One in Brooklyn.

Q. What is the name of that? **A.** The Brooklyn Milk Dealers.

Q. Brooklyn Milk Dealers' Protective Association? **A.** No, sir; just association.

Q. Well, what others? **A.** The West Side Milk Dealers' Association.

Q. You are secretary of that, too? **A.** Yes, sir.

Q. Now, what others? **A.** That is all.

Q. So you are the secretary of how many milk dealers' associations? **A.** Four.

Q. Four of them. Now, do any of the organizations that belong to the Milk Dealers' Protective Association also belong to one of the other three organizations of which you are secretary? **A.** I think the Liebmann Dairy Company belongs to the Bronx.

Q. That is, membership is not confined to one particular organization. A man or corporation may be a member of one or more of these organizations? **A.** Yes, if they have business there.

Q. And is the business of the Brooklyn organization, and the West Side organization, and the Harlem and Bronx organization the same as the business of the Milk Dealers' Protective Association? **A.** What do you mean, the same business?

Q. Yes. **A.** The same thing.

Q. Is it for the protection of the members and for social intercourse? **A.** Yes, sir.

Q. Do the other organizations do any collecting of cans? **A.** No.

Q. Only the Milk Dealers' Protective Association does that? **A.** That is the only can collecting bureau there is.

Q. Well, then, what is the purpose of the West Side Milk Dealers' Association, for instance? **A.** Same purpose.

Q. When they meet? **A.** Yes, sir.

Q. You have picnics? **A.** Yes, sir.

Q. Excursions? A. We haven't had no excursions; we have that all together.

Q. All the organizations together? A. Yes, sir.

Q. Well, what other purposes has this organization; do they talk about the price of milk? A. It is discussed.

Q. They exchange their views as to the price of milk, do they? A. Yes, the condition of the country and so on.

Q. Well, what else? A. That is all.

Q. Do you have any endowment? A. No, sir.

Q. You don't have any sick benefits? A. No, sir.

Q. It isn't a benevolent association, is it? A. No, sir.

Q. What is the idea of having three organizations of that nature; one in Brooklyn, one in Harlem, and one on the West Side, in addition to the Milk Dealers Protective Association? A. I think it was really because they didn't want to come down so far; they wanted one in their own section.

Q. Is the secretary the same in all the organizations? A. Yes, sir.

Q. How about the president? A. Yes, sir.

Q. How about the treasurer? A. That is different.

Q. What? A. It is different as to treasurer.

Q. Don't you keep the moneys of the West Side organization? A. The special dues, yes.

Q. Do you keep the special dues of the Brooklyn organization? A. Yes.

Q. And of the Harlem one? A. Yes.

Q. So that you are the custodian of the special dues in all these four organizations? A. Yes, sir.

Q. Do all of them levy special dues? A. Yes, sir.

Q. How often? A. As the funds require them, as they need them.

Q. What is done with the funds? A. They are carried on the can bureau.

Q. I am talking about those levied to the other three organizations; what are they levied for? A. They are levied for the same purpose.

Q. What purpose? A. To collect cans.

Q. But you told us that the other three didn't do any collecting?

A. This Protective Association Can Bureau collects that, too. Collects for all of them.

Q. You mean that the Milk Dealers Protective Association collects cans, not only for its members, but also for the members of the other three organizations; is that right? A. Yes, sir.

Q. You have the books of these other three organizations? A. Yes, sir.

Q. How far back do those books run? A. As far as their organizations.

Q. Well, how far; take the Brooklyn organization; how long has that been in existence? A. A little over a year.

Q. And the West Side Association? A. The West Side I think a year and a half, a year and six months.

Q. And the Harlem association? A. That is a little over a year.

Q. And you have the books and records of all these three organizations? A. Yes, sir.

Q. From the time that each of them was organized; is that right? A. Yes, sir.

Q. You keep accounts of the special dues paid to you at any rate? A. Yes, sir.

Q. Where do you keep such accounts? A. In the books.

Q. Do you deposit the moneys in any bank? A. The money is deposited in the Brooklyn Savings Bank.

Q. All of it? A. No.

Q. For all four organizations? A. Yes; all but what I have in my possession of the last assessment.

Q. But such of it as you have not in your possession of the last assessment is deposited in the Brooklyn Savings Bank? A. In the Prudential Savings.

Q. In your name? A. No, sir.

Q. In whose name? A. I think it is in the association's name.

Q. What associations? A. That I don't know; I don't know whether the particular association is mentioned or not.

Q. Who deposits? A. Two trustees.

Q. Who are the trustees? A. One is Dick Techin, and the other is D. W. Katz, who is the president of the Prudential Savings Bank.

Q. Who is Katz; where is he to be found? A. He is in Brooklyn, in this Prudential Savings Bank.

Q. He is the president? A. Yes, sir.

Q. What is Mr. Teehin? A. He is a milk dealer.

Q. Where is his place of business? A. 118th street.

Q. Do you know the number? A. 508.

Q. How much does this fund now on deposit in the Prudential Savings Bank amount to? A. That I couldn't say.

Q. Oh, in round figures? A. I think between three and four thousand dollars; or four and five thousand dollars; I don't exactly know.

Q. Is that all of the money of all four organizations? A. That is all of the money with the exception of what I have with me in my possession.

Q. How much have you in your possession? A. I don't know.

Q. Well, about? I haven't got it, surely I don't know? A. I should think about \$2,000, or \$1,500; something like that.

Q. How much is it, Mr. Wetterhahn? A. I don't exactly know the figures.

Q. Will your books show it? A. I think so.

Q. These books that I have? A. No, they won't show them all.

Q. What books will show it? A. I would have to look at all the associations' books to figure up the special dues.

Q. The special dues collected for the Milk Dealers' Protective Association, are entered in these books, are they not? A. Yes, sir.

Q. You think you have at least \$3,500, and that there is on deposit about \$5,000? A. No, there isn't as much as that.

Q. How much? A. Between four and five thousand dollars.

Q. Who has the bank book? A. I think the president of the bank.

Q. The president of the bank has the bank book? A. I think so.

Q. That is Mr. Katz? A. Yes, sir.

Q. Is he a member of the organization? A. The Brooklyn.

Q. Is he a milk dealer? A. Yes, sir.

Q. At the same time, he is president of this bank? A. Yes, sir.

Q. And you don't know in whose name this fund is deposited? A. It is deposited, I think, in the associations' name; whether the particular one mentioned or not, I don't know.

Q. All these special assessments are levied to defray the expenses of the can bureau, are they? A. Yes, to have some money in the funds.

Q. For what purposes? A. For what may arise.

Q. For what may arise? What was anticipated? A. I don't know.

Q. But you were the secretary of all these organizations? A. Yes, sir.

Q. And you were present at all the meetings? A. Yes, sir.

Q. You took full minutes of all that transpired at all the meetings? A. No, I couldn't write fast enough for that, to take the full minutes.

Q. But you took the minutes? A. Yes, sir.

Q. When an assessment was levied what was said about the purposes for which it was levied? A. That I don't remember; just what was said.

Q. When was the last assessment levied? A. The last was in September.

Q. Of what year? A. This year.

Q. Were you present at the time when it was levied? A. Yes, sir.

Q. How much was it? A. Fifty cents a can.

Q. Was that the usual rate? A. Oh, no, that was the highest rate.

Q. That was the highest rate? A. Yes, sir.

Q. What was said at the meetings as to the reason why it was necessary to levy this assessment? A. That it was raised for the purpose of hiring the bacteriologists and chemists and counsel to prevent the New York Milk Dealers' Sanitary Association from—they was trying to abolish the sale of dipped milk in grocery stores and delicatessen shops. They were going to hire the bacteriologists, chemists and counsel to examine various specimens in the various cities, and present them to the New York Milk Association, and explain to them that it was just as sanitary to sell milk out of the can as it is in bottles.

Q. Did each of these organizations levy an assessment for that purpose? A. Yes, sir.

Q. How many members are there in the Milk Dealers' Protective Association? A. I think it is 24 or 25.

Q. How many in the Brooklyn organization? A. There is 18, I think.

Q. How many in the Harlem association? A. I think there is 23.

Q. And in the West Side association? A. Sixteen; 16 or 17, I think.

Q. Altogether, how many members are there? A. I couldn't say; I should think around about 70 to 80.

Q. You think there are between 70 and 80? A. I think so.

Q. When you say that the last assessment was fifty cents a can, you mean fifty cents a can for every can sold by each member on a certain day; is that right? A. Yes, sir.

Q. Now, can you tell the Committee about how many cans of milk are sold on a certain day by these 70 or 80 milk dealers? A. About how many cans?

Q. Yes. Of course, I know you cannot give it to us exactly, but in a rough estimate? A. I don't think I would want to say just how much.

Q. Perhaps you wouldn't want to say, but I wish you would say it? A. I don't know as I could get anywheres near it without counting it up.

Q. Will these books help you? A. They would only help in one association.

Q. That would give us an idea. Now, those milk dealers of that association are about 23 members? A. Something like that.

Q. Now, just see how many cans of milk they disposed of? A. 4,591 cans in August.

Q. That is, members of this organization in August paid for 4,591 cans? A. Yes, sir.

Q. There are some that didn't pay at all, are there not? A. I don't remember.

Q. Well, just see whether every one is here that paid that assessment? A. Well, those here, those paid.

Q. I know, but is that the entire list of your members? A. I think that is what it was; yes, sir.

Q. Well, count them. A. Well, we have had some come in since, and some went out.

Q. Well, that is about the list, then? A. Yes, sir; that is about the list.

Q. You collected for 4,591 cans, is that right? A. Yes, sir.

Q. Now, the Brooklyn organization you said had 18 members; is that right? A. No, they got more, I think.

Q. How many? A. I think 21 or 22; I think so.

Q. 21 or 22. And how many cans do they sell a day? A. Well, that I don't know, I would have to look.

Q. Do they sell at least as many cans as these? A. No.

Q. Less? A. Yes, sir.

Q. How much less? A. I couldn't say how much.

Q. Do they sell as much as 4,000 cans in the city of Brooklyn? A. I couldn't say positively whether they do or not.

Q. I understand you cannot tell us positively; would it be about 4,000 cans? A. I think it would be less than that.

Q. How much less? A. Maybe 3,500.

Q. It would be 3,500 at least? A. I wouldn't say positively.

Q. Well, about that? A. Something like that; I couldn't say positively.

Q. Well, would they sell as many as 3,000? A. I couldn't be positive.

Q. As many as five; would you be positive of that? A. Yes, sir; sure.

Q. How much would you be positive of — one thousand? A. Yes, sir.

Q. Two thousand? A. Yes, sir.

Q. Three thousand? A. That I don't know.

Q. 2,500? A. I wouldn't be positive unless I looked in my books. It might be 2,500; it might be 3,000.

Q. Where are your books? A. Home.

Q. For all these organizations? A. Yes, sir.

Q. We will excuse you. Go and get them, please.

VICTOR C. SCHAUMBURG, recalled.

Examination by Mr. KRESEL:

Q. Mr. Schaumburg, have you produced the checks and bills for the various payments about which you were questioned yesterday? A. The checks and vouchers; yes, sir.

Q. Have you the check and bill for the payment of \$2,500 to E. P. Coyne, under date of January 13th, 1908? A. I have the check and the receipt for the same.

Q. Will you please let me see it? A. (Witness hands papers to counsel.)

(Paper received in evidence and marked Exhibit No. 40.)

Q. Is this Exhibit No. 40 the only voucher that you have in payment of the \$2,500 to Mr. Coyne? A. Yes, sir.

Q. This voucher reads as follows: "New York, January 13, 1908. Received from the Coney Island Jockey Club \$2,500 for account of blank. (\$2,500.) Edward P. Coyne." Who told you this payment was for legal services? A. Mr. J. H. Bradford.

Q. The receipt doesn't say so, does it? A. No, sir.

Q. Is there anything in that receipt which would indicate what services Mr. Coyne performed? A. Not from the receipt; no, sir.

Q. Then you have outside knowledge of what his services were for? A. Yes, sir.

Q. And what is that knowledge? What did he do for you for the \$2,500? A. He performed legal services.

Q. What legal services? A. That I don't know.

Q. Have you never received an itemized bill from Mr. Coyne of what his services were? A. No, sir; we have not.

Q. Do you know whether he performed services in connection with any particular suit? A. No, sir; I do not. The only thing, as I said, I presume that he protected their interests at Albany, and also perhaps acted for us in testing the constitutionality of the Agnew-Hart law, and also in interpreting that law; he brought several actions; in fact, I think four or five during the year 1908, to determine the validity, and also to determine the Agnew-Hart law. It may have had something to do with that, and it may not have; I don't know.

Q. In what way did he protect your interests in Albany? A. In what way?

Q. Yes. A. I don't know.

Q. You say he protected your interests in Albany, and I wanted to know whether you knew how? A. No, I don't; except I presume he appeared before the committee.

Q. Not what you presume, Mr. Schaumburg, but what you know? A. As a matter of fact, I don't know.

Q. You really don't know what services Mr. Coyne performed? A. I don't; no, sir.

Q. Did you make this payment of \$2,500 direct to Mr. Coyne?
A. I think I forwarded the check to him.

Q. Who in your club retained Mr. Coyne to perform these services? A. I couldn't say.

Q. Whose duty is it to do those things? A. Mr. Bradford was treasurer at that time, and Mr. Fellowes was secretary. Either one of them may have retained him.

Q. Mr. Bradford is dead? A. Yes, sir.

Q. What has become of Mr. Fellowes? A. He is dead, also.

Q. Both of them are dead? A. Yes, sir.

Q. Who was president of your club at that time, in January, 1908? A. I will have to look.

Q. Was Mr. Parsons? A. I think he was; Mr. S. L. Parsons. I could tell by looking at the minute book.

Q. Do you happen to know where Mr. Parsons is? A. He is in Europe.

Q. Now, can you suggest any way in which we can find out what services Mr. Coyne performed for this \$2,500? A. I could not.

Q. Now, have you produced the bill for the \$2,216.49 paid to Mr. Fitzgerald? A. That is right; I have an acknowledgment.

(Paper received in evidence and marked Exhibit No. 41.)

Q. Is this Exhibit No. 41 the only bill or voucher that you have for this payment? A. Yes, sir.

Q. And that reads as follows: "Brighton Beach Racing Association, 215 Montague Street, Brooklyn, N. Y., February 11th, 1908. J. H. Bradford, Esq., Treasurer Coney Island Jockey Club, 571 Fifth Avenue, Manhattan. Dear Sir: I have to thank you for check No. 2,057 on the Fifth Avenue Bank, for \$2,216.49, balance of your share of legal expenses. Very truly yours, C. J. Fitzgerald." You wouldn't call this a bill, would you, Mr. Schaumburg? A. No, that is a receipt.

Q. That is a receipt? A. Yes, sir.

Q. Where is the bill for this item? A. We never received a bill for it.

Q. Well, what were these legal services that he performed?
A. Personally, of my own knowledge, I don't know.

Q. Do you know who performed them? A. I couldn't say.

Q. You don't know anything about it? A. No, sir.

Q. You don't know whether any legal services were performed, do you? A. Nothing except that receipt.

Q. You don't know? A. Of my own knowledge, I don't know.

Q. Mr. Fitzgerald wasn't a lawyer, was he? A. He was not; no, sir.

Q. He was the secretary of this Brighton Beach Racing Association? A. Yes, sir.

Q. It says here that this \$2,216.49 was the "balance of your share of legal expenses." How much had you paid Mr. Fitzgerald before this? A. Nothing; not a cent.

Q. Then it is incorrect to term this a "balance?" A. Apparently.

Q. Do you know him personally? A. Yes, sir.

Q. You don't know whether he is still with that association? A. No, sir; I don't.

Q. Do you know where he lives? A. He lives in Brooklyn; he lived there six months ago.

Q. You have seen him as late as six months ago? A. The last time I saw him I think was during our June meeting. That is six months ago; he is the starter.

Q. He is the starter? A. No, he wasn't the starter; he is the judge.

Q. Now, have you the bill for the payment of the \$3,000 to Mr. Johnstone? A. Yes, and a receipt for it.

(Paper received in evidence and marked Exhibit No. 42.)

Q. Now, is this the only voucher receipt or bill that you have for that payment? A. That is the only one.

Q. This is a simple receipt? A. A simple receipt.

Mr. KRESEL: (Reading) "Received from the Coney Island Jockey Club \$3,000, for account of retainer for special services. Frank K. Johnstone."

The WITNESS: That is right; yes, sir.

Q. I think I asked you yesterday whether Mr. Johnstone was a lawyer or not, and you said he was? A. I presumed he was.

Q. Do you know where his office is? A. I don't know.

Q. Do you know whether it is in New York? A. No, sir.

Q. Do you know whether it is in Brooklyn? A. No.

Q. Is it in Albany? A. No. I have no idea, but I stated yesterday that of that sum of \$3,000, \$2,250 was returned to us.

Q. Did you never get an itemized bill for the services which Mr. Johnstone performed? A. No, sir.

Q. How do you know there were legal services? A. I don't know.

Q. But you have entered them in your book as "legal services." A. I was instructed to enter them as legal services.

Q. Who instructed you? A. Mr. Bradford and Mr. Fellowes.

Q. They are both dead? A. They are both dead.

Q. Didn't you write a letter to each of the other three associations asking them for a contribution to this \$3,000? A. No, sir.

Q. Were there any such letters written? A. No, sir; I was told verbally or orally by one of the officers that these three associations would return to us \$2,250; each association \$750.

Q. And without your communicating with them, as far as you know, they sent their checks in? A. They sent their checks in; yes, sir.

Q. Can you tell me whether the date of this receipt, July 28, 1908, suggests to your mind the special services that Mr. Johnstone was retained to perform? A. No, I was not consulted in any of these matters at all.

Q. Did Mr. Parsons know about it? A. I hardly think so.

Q. He was the president of the association? A. He may have been; I don't know.

Q. At that time, July 28th, was Mr. Bradford the treasurer? A. No, sir; Mr. Hitchcock was appointed July 6th.

Q. Then you were in error? A. I beg your pardon; I didn't see the date.

Q. Then it lies between Mr. Fellowes and Mr. Hitchcock? A. That is the idea.

Q. And Mr. Hitchcock is still the treasurer of your club? A. He is; yes, sir.

Q. Now, have you the bill for the payment to Mr. Daingerfield? A. Mr. Daingerfield?

Q. Yes; \$757.73; have you that? A. Yes, sir.

(Paper received in evidence and marked Exhibit No. 43.)

Q. Are these two pages that you have handed me the only bills or receipts that you have for this payment. A. Yes, sir.

Q. The first paper reads: "October 23, 1908. To the Coney Island Jockey Club. For your proportion of the legal account and disbursements of R. C. Cummings, attorney-at-law, \$757.73. Received payment, A. Daingerfield." This is accompanied by a letter to F. R. Hitchcock, Esq., the treasurer of the Coney Island Jockey Club. "My dear Sir: Enclosed please find account of your proportion of legal services and disbursements on the legal account of R. C. Cummings. I am instructed by the committee appointed to audit legal expenses to request you to draw a check payable to my order for transmission to Mr. R. C. Cummings, attorney-at-law. Yours truly, A. Daingerfield." Have you the check which was sent in response to this request? A. Yes, sir.

Q. Will you produce it, please? A. What is the date?

Q. October 23, 1908. (Witness produces paper.)

(Paper received in evidence and marked Exhibit No. 44.)

Q. I show you Exhibit No. 44. Is this the check by which payment was made for Mr. Cummings' services? A. Yes, sir.

Q. Is it endorsed by Mr. Cummings? A. No, sir; the check was drawn to the order of Mr. A. Daingerfield, and endorsed by him for deposit in the Windsor Trust Company of New York.

Q. In his account? A. In his account.

Q. Now, have you the receipt or bill for payment to Mr. Sturgis on November 17th, of \$5,714.29? A. Yes, sir.

(Witness hands paper to counsel.)

(Paper received in evidence and marked Exhibit No. 45.)

Q. Is this Exhibit No. 45, that you have handed to me, the only bill or voucher for that payment? A. Yes, sir.

Q. And that reads as follows: "Received from the Coney Island Jockey Club \$5,714.29 for account of special deposit in the Standard Trust Company. F. K. Sturgis, Treasurer," by some one, Daingerfield. Have you the check for that? A. Yes, sir.

Q. Will you please produce it? A. (Witness produces check.)

(Paper received in evidence and marked Exhibit No. 46.)

Q. Is this Exhibit No. 46 the check by which the payment was made? A. Yes, sir.

Q. Now, what was this special account of the Standard Trust Company? A. I don't know, sir.

Q. You said yesterday, you testified yesterday, that you thought it was to take care of future legal disbursements? A. Yes, that is what the minute book shows.

Q. How much was there of that fund in the Standard Trust Company? A. I don't know, sir.

Q. Did the other racing associations contribute to that fund? A. I presume they did. Of my own knowledge, I don't know.

Q. Do you know whether they contributed in equal proportions? A. I don't know, sir.

Q. Who was the custodian of this fund, do you know? A. Evidently, Mr. F. K. Sturgis.

Q. Mr. Sturgis was at that time the treasurer of the Jockey Club? A. Yes, sir.

Q. Has your Jockey Club ever received an accounting of what became of their proportion of this fund? A. No, sir.

Q. Was there ever an accounting rendered to your club by Mr. Sturgis as to how he disposed of this \$5,714.29? A. No, sir.

Q. And that was paid two years ago? A. That I don't know.

Q. It was paid November 20, 1908? A. Yes that was paid two years ago.

Q. Is Mr. Sturgis a member of the firm of Strong, Sturgis & Company? A. Yes, sir.

Q. Do you know whether anyone else had charge with Mr. Sturgis of this fund? A. No, sir.

Q. You know Mr. Sturgis personally? A. Yes, I do.

Q. His office is on the same floor with your office? A. The Jockey Club, do you mean?

Q. Yes. A. Yes, sir.

Q. Have you ever spoken to him about this fund in the Standard Trust Company? A. No, sir. Mr. Sturgis doesn't make his headquarters up at the Windsor Arcade, our building.

Q. Since you were questioned here yesterday about this particular account, have you spoken to anyone about it? A. No., sir.

Q. At whose direction did you make this check? A. At the direction of one of the officers at that time, Mr. Hitchcock or Mr. Fellowes.

Q. You were told that that was for future legal expenses? A. Yes, sir; our minute book shows that the treasurer was authorized at the executive committee meeting to draw that check, I believe.

Q. To draw that check? A. Yes, sir.

Q. Well, the check was drawn, but how about the future legal services? A. What do you mean, sir?

Q. Was there anything before the executive committee which indicated that this was an expenditure for future legal services? A. Well, there was a fund created, which the receipt shows, to meet future legal expenses.

Q. The receipt doesn't say that it was for future legal expenses, Mr. Schaumburg? A. Well, it was intended for that purpose.

Q. That is exactly what I am trying to find out. Who told you it was for future legal expenses? A. A meeting of our executive committee was held at which the treasurer was authorized to draw a check for such an amount to the order of F. K. Sturgis, to be placed in a special fund to meet future legal expenses.

Q. Who was it that told that executive committee to meet? A. That I don't remember.

Q. Who had charge of this part of the business in your club? A. Charge of what part?

Q. This business of sending out \$5,714 and amounts like that? A. The officers of the club.

Q. The treasurer? A. The treasurer and the secretary.

Q. Did you? You were the secretary? A. Not at that time.

Q. You were not at that time? A. No, sir.

Q. This was in November, 1908? A. No, sir; I was not.

Q. Will you please obtain, if you can, Mr. Schaumburg, a memorandum of how this money was expended? A. I will try to.

Q. And if you do obtain such a memorandum, will you let me know, please? A. Yes, sir.

Q. All right, Mr. Schaumburg. Now, if you will try to get that for me from Mr. Sturgis, and call me up, I will tell you whether I shall want you again.

W. N. BAMENT, recalled.

By Judge BRUCE:

Q. At the close of your examination, had on the 23rd inst., you gave an explanation of the eighty per cent. co-insurance clause. Is there anything further which you wish to add to the explanation which you gave at that time, Mr. Bament? A. Owing to the fact that a couple—two or three of the New York papers,—stating a slight incorrection in my explanation, I would like the opportunity of giving three concrete examples showing the operation of the co-insurance clause in its various phases, in order to correct any impression—any erroneous impression—which may have been given through the medium of the press.

Q. Will you give them at this time? A. Yes. I have prepared three examples showing the operation of the eighty per cent. co-insurance clause.

First. Total sound value, \$10,000; insurance that should be carried \$8,000; insurance carried, \$8,000; loss, total, \$10,000. Assured collects the full amount of his insurance; \$8,000.

Q. That is because he had insured it to eighty per cent. of the value? A. Exactly so. Example 2: Total sound value \$10,000; insurance that should be carried \$8,000; insurance carried \$8,000; loss, \$6,000. Assured collects full amount of his loss, \$6,000.

Q. That was because he was insured up to eighty per cent. of the value? A. Exactly. Example 3: Total sound value \$10,000; insurance that should be carried, \$8,000; insurance carried, \$6,000; loss, \$6,000. Assured collects six eight thousandths of loss, or \$4,500.

Q. That is the same as if he had issued a policy to himself of \$2,000? A. Exactly so.

Q. So as to make the six and the two equal to eighty per cent. of the value? A. Exactly.

By Chairman MERRITT:

Q. As we go along: Now, you say "Insurance that should be carried," what do you mean by that? A. That is to say, in order that he may not have to stand a portion of the loss suffered himself.

Q. When is that determined? After the loss or before? A. The

sound value is determined after the loss, both on real property and personal property.

By Judge BAUCH:

Q. When you use the words here "Insurance that should be carried," you mean eighty per cent. of the value? A. Exactly so, whatever that value may have been found to be after the fire.

By Senator WAGNER:

Q. Who determines that finally — what the actual value is, and whether or not he is insured for eighty per cent. of the value of the property? A. The sound value and the loss is determined first, if possible, by agreement between the assured and the adjuster; or, in event of failure to agree, for them to agree to submit the matter to appraisers, mutually chosen, whose word is binding as to the amount of the sound value and loss.

By Judge BRUCE:

Q. Is that a provision of the standard policy? A. That is a provision of the standard policy. I would say in the first example the assured stands two eight thousandths of the loss himself, or \$1,500, he having elected to do so before the fire by having taken out too small an amount. Here is a general proposition: If a man takes out and maintains insurance on his property of not less than eighty per cent., he can in all instances, under the operation of the eighty per cent. co-insurance clause, whether the loss be total or partial, collect the full amount, up to, but not exceeding, the face of his policy.

Q. Now, is there anything further you wish to say upon that subject? A. I might just make an observation bearing upon the practical effect, or, in fact the virtues of the co-insurance clause as revealed by the situation in San Francisco. As I recall, Professor Whitney in behalf of the Board of Underwriters in San Francisco, just prior to the conflagration, was asked to compile certain statistics to ascertain what percentage of insurance was carried as to the value of property in San Francisco for the five years immediately preceding the conflagration.

Q. He was asked to do this prior to the conflagration? A. He was asked to do this prior to the conflagration. He had access to the files of all the insurance companies in San Francisco, and it took several months to compile the figures and, as I recall, the result was his investigation was that the amount of insurance carried, as to value, was about 70 per cent. And I was a member of the Committee of Five, on the adjustments in San Francisco, and the report of that Committee of Five, which settled over one thousand losses — the committee took jurisdiction in all cases where five or more companies were interested, and it is a singular fact that in about eighty millions of losses, on about \$110,000,000 of sound value, it shows that the insurance carried as to companies in San Francisco, was a shade less than seventy per cent. — to be exact about 69 1-2 per cent., virtually confirming the figures which Professor Whitney had made as the record five years preceding the fire. That leads me to state that the observation which Professor Whitney made in his report to the Merchants Exchange in San Francisco, that if the co-insurance clause had been in operation in the City of San Francisco. the insurance companies would undoubtedly have had to pay twenty or twenty-five million more than they did as a result of that fire.

I have three cases in mind where the insurance on certain large buildings was less than ten per cent. of the value, and the loss to the ones of these three buildings, by reason of not having sufficient insurance, was a little less than one million and a half dollars. There is a million and a half dollars loss on three buildings alone, by reason of this class of insurance, which I think the general use of the co-insurance clause would have rectified.

Q. Did the State of California at that time have a standard policy? A. It did not, and co-insurance was not in general use.

Q. How many States of the Union have the standard policy? A. I did not bring my book along to show, but I imagine fifteen States. I think I gave it in my testimony last week.

Q. And in how many of these States does the standard policy contain the co-insurance clause? A. I think virtually all of them have a rider of some character bearing on co-insurance. It is all in the shape of a rider.

Q. How did this idea of co-insurance originate? A. The first I ever heard of co-insurance was in an address delivered by an em-

ployer of mine before the Underwriters Association of the Northwest in the early eighties; and it came into general use shortly after that. It was adopted as a basis of rating, because it is realized that that was the only possible way by which rates could be equalized on the part of the public. It would be manifestly unfair for one man to insure his property for one tenth of its value, and another for eighty per cent. of its value, and both get the same rate, especially, as I stated last week, that by far—in fact ninety or ninety-five per cent.—of all the losses which occur are partial losses; either large or small partial losses.

Q. Why would it be manifestly unfair? A. For instance, take in the case of the Fairmount Hotel in San Francisco. The sound value of that property was two and one-half million dollars. The insurance carried there was \$200,000. Now, if that loss was \$150,000, why the insurance companies would have had to pay that whole \$150,000, although they had secured premiums on only \$200,000, on a valuation of two and one-half million.. Take another man who had insurance, say, on property of equal value, two and one half million dollars, and he had carried insurance of \$2,000,000, you see that the insurance company—the proportion of any one insurance company on that property would be a comparatively small amount as contrasted with \$150,000. The insured would have to stand a very large proportion of the loss himself.

Q. Would it be possible to eliminate the co-insurance clause in the event that the rate was lower; that a lower rate was given in case that larger amount of insurance was carried? A. I think that prevails in some States; that in the event of the co-insurance clause being eliminated, a higher rate is charged. It is optional with the insured to either have it or have it not.

Q. Well, would not that effect the same result, so that in the event a piece of property was insured for only ten per cent. of its value, it should pay one rate; if it was insured for twenty per cent. it should pay a smaller rate, and three per cent. a still smaller? A. Exactly so.

Q. And so on up until full value? A. That is correct in principle.

Q. Wouldn't that effect the same result you get by the co-insurance clause? A. Exactly so.

Q. Isn't the co-insurance clause then a necessity, if at all, arising from the fact of the unfair rates fixed by the Fire Insurance Exchanges? A. That is what I say; that as a basis of rates, the eighty per cent. factor must be taken into consideration in order to equalize — as a matter of equalization.

By Chairman MERRITT:

Q. You think in practice it works out more equitably for all interests to have the co-insurance clause, rather than to attempt to have a schedule of rates? A. Well, the schedule of rates, you see, is based upon co-insurance.

By Judge BRUCE:

Q. Supposing you eliminate the co-insurance clause, wouldn't it be possible for any individual company, or any Fire Insurance Exchange, to make a schedule of rates based upon the percentage of insurance carried as to the value of the property? A. That brings up the idea as to whether the insured — do I understand from your question as to whether co-insurance should be optional?

Q. Yes. A. Yes. That is being done in some States at the present time.

Q. Wouldn't that be in fact a more equitable and just method of rating than making a rate based upon the eighty per cent. co-insurance clause? A. I think it is eminently — I cannot conceive of anything fairer than taking the eighty per cent. co-insurance clause as a basis, but letting it be optional with the insured whether he will accept the eighty per cent. clause, or pay a higher rate for the privilege of carrying a lesser amount. I think he should have the option.

Q. If one man insures his property for 75 per cent. of its value, and another only insures for 25 per cent. of its value, under the eighty per cent. co-insurance clause, one gets as much benefit as the other, doesn't he? A. On the contrary the man —

Q. (Interrupting) He has a right, I mean; as to rates, I mean; not as to loss? A. Not as to loss.

Q. But as to rates? A. Yes. You see the operation of the eighty per cent. co-insurance clause, in its practical operation makes

it mandatory upon him to carry that amount if he is to get the full amount of his loss:

Q. Well, supposing here are two buildings; the risks are equal and under the co-insurance clause of eighty per cent. the rates are the same. One man insures for 75 per cent. of his value; the other man insures for 20 per cent. Now, they get the same rate, do they not? A. If they have not got the co-insurance clause in their policy, undoubtedly.

Q. Well, if they have got it, don't they get the same rate? A. They get the exact — no, if the eighty per cent. co-insurance clause is in their policy, they get the same rate. Exactly so, but suffer in the event of losses.

Q. That is very true, but wouldn't it be equally just, and more just and equitable if, instead of having the eighty per cent. co-insurance clause, or any other co-insurance clause, you should have a rate on the same risks, or equal risks, based upon the amount of insurance carried? A man who carries 20 per cent. insurance would have to pay a higher rate than the man who carried 75 per cent.? A. But you won't know what the value of the property is unless it is appraised before the fire, and that is impossible as respects personal property, because it fluctuates so.

Q. That would require, at least so far as the company was concerned, an appraisal upon its part, of the value before the issuance of the policy? A. But it is absolutely impossible as respects personal property.

Q. On account of the change in the value, or fluctuation? A. Absolutely so.

By Chairman MERRITT:

Q. The eighty per cent. is fixed by common consent and experience as about the fair proposition? A. Exactly so. That is regarded as a sort of a medium —

Q. (Interrupting) Is that derived as the result of experience in figures? A. Eighty per cent. seems to have been the figure which they started on originally. Initially how they arrived at that I do not know. In the older times, you know, the insured was not supposed to carry insurance for more than three quarters of the value of his property. It seems to be a sort of unwritten law in the

minds of the public, but that is what they ought to carry, and a great many people, particularly in the lumber district in Michigan, want full insurance. They wanted the privilege of carrying 100 per cent.

By Professor WHITNEY:

Q. The co-insurance clause is simply, in reality, the putting up of the insured to keep up the value of his property? A. Exactly. It has that effect.

Q. The companies admit that they cannot in any practical way keep track of the values of the property, and as the insured is in a position to know what the values are, they put it up to him? A. Exactly.

Q. And by stating the eighty per cent. co-insurance clause, he agrees to keep track of the matter? A. Virtually so.

Q. And they realize that if he does not keep track of it, he will have to act himself as co-insurer? A. Virtually that is it.

By Chairman MERRITT:

Q. It is a curious thing that eighty per cent. is pretty nearly the same percentage that the assessed valuation bears to what is regarded as full value. You go through the assessment rolls of the counties of this State, or any other place — it varies somewhat — but generally the assessed valuation on the books of the assessor would be about eighty per cent. of what is regarded as the fair and full value. It seems to be a point where all the water is squeezed out? A. Yes, sir; exactly so.

By Judge BRUCE:

Q. Well, in these States whose standard policies have an eighty per cent. co-insurance clause, are the rates any less in these States than they are in States in which there is no such clause in the standard policy? A. In the States which have no standard policy, I may say that the use of the New York standard policy is almost universal with all of its riders; in fact, the co-insurance rider.

Q. Well, are there some States which have a standard policy which does not contain a co-insurance clause? A. I cannot recall

any States but what have a co-insurance clause as a rider. There are some States, I think, that have an entire co-insurance clause law, but I do not think they are standard policy States.

Q. But in those States which have an anti co-insurance clause are the rates of insurance any higher than they are in the State of New York? A. I cannot answer you.

Q. Well, now, Professor Whitney's experience in fixing the value of properties in San Francisco prior to the fire, shows that it is practicable to appraise values with very great accuracy prior to loss. Is it not so as far as real estate is concerned? A. I think you misunderstood me. Professor Whitney had access to all the loss files of the companies doing business in San Francisco prior to the fire, and his statistics were taken from proofs of loss filed in these offices; that is, values having been made up from the adjusters' papers after the loss had occurred.

By Mr. HURRELL:

Q. Did you say last week, or what did you say last week, regarding the application of the co-insurance clause to policies covering \$2,500 and under? A. On household furniture in the city of New York, where the value is less than \$2,500, the co-insurance clause is inequitable, does not apply.

Q. Does the same rule apply to business risks? A. It does not. I understand it is universal as respects everything except personal property under \$2,500 in value.

By Senator WAGNER:

Q. Do you mean personal property or do you mean household property? A. Well, the only class of property which is exempt from the operation of the co-insurance clause is household furniture valued at less than \$2,500.

By Judge BRUCE:

Q. That is true, you say, in the Metropolitan district? A. So I understand; yes.

Q. What rule prevails outside of the Metropolitan district in this State? A. In the large cities, the co-insurance clause is in opera-

tion. As respects the country towns, I do not think it is in use; in the smaller towns in the State.

Q. You mean in the large cities of the State the same rules prevail as prevails here in the Metropolitan district? A. I do not think the exact rule. I do not think so. I do not think I had better attempt to answer that, Mr. Bruce, because I am not absolutely familiar with the underwriting branch outside of New York enough to testify with that intelligence that I should.

Q. I was simply wishing to ascertain why one rule should prevail favorable to the assured in the Metropolitan district, and not the same rule prevail in other cities of the State? A. I am inclined to think that it is general throughout all the large cities of the State, but whether it is general as respects the smaller hamlets, I am not clear. I won't say it is or it is not. I cannot answer.

Judge BRUCE: We will bring that out from some other witness.

By Mr. HURRELL:

Q. Is there a general policy of the company that some business risks, where a loss is less than five per cent. of the amount of insurance, not to apply the eighty per cent. clause? A. Under the phraseology of the eighty per cent. average clause, a special inventory is not required where the loss is less than five per cent. of the insurance. That does not necessarily mean that the co-insurance clause does not apply, but the idea of that is not to put the assured to any unnecessary trouble, in fact, any trouble at all, so far as the ascertainment of the value is concerned in those small losses.

Q. Well, of course, the way you ascertain whether the insurance has carried eighty per cent. of his value is to inventory his whole stock. For instance, if it is a mercantile loss. It might be done another way. You might make a book statement as they do in the event of total destruction.

Q. But you do discover what was the value he started on and what the value was at the time of the fire? A. We have to try to do that but very great pains is not taken in these mercantile losses to ascertain the sound value.

Q. Anything else that is over, you tried to get at to see whether the eighty per cent. clause affects it? A. Oh, yes.

Q. Now, in the small losses—I was getting at what you did when you could say absolutely it was just a small loss; then, 'as a practical matter, what do you do? A. As a practical matter, I find in analyzing the reports, the assured's statement as to sound value is excessive. There might be some instances where it would be too low. In one case, of under insurance, where it might be gone into a little more thoroughly, but we cannot exact an itemized inventory of his stock under the terms of the clause.

Q. Well, in these cases where the insured's own statement of the value of his stock shows he was carrying eighty per cent. and the loss is under five per cent., do you apply the eighty per cent. clause in adjusting the loss? A. If the assured should in his proofs of loss state his value was very much in excess of the insurance, then we would apply the co-insurance clause automatically. Yes, we would take his statement for the value. He had made the case himself, and we took his word for it.

Q. Are you familiar, Mr. Bament, with the method which Professor Whitney has adopted in figuring the earnings of some insurance companies; the operation he has selected? A. I have seen the synopsis of his statement; yes.

Q. Well, have you examined it and formed an opinion about whether that was the correct method, or whether there is any flaws in it from your point of view? A. I would take pleasure in giving my views in regard to the matter. Has the Professor the statement handy, or shall I take it from my memoranda.

Q. Oh, you mean the formula? A. That is the compilation; the compilation.

By Judge BRUCE:

Q. Well, first, Mr. Bament, give us your views as to this formula; as to its correctness; that is, whether or not it is theoretically correct?

A. As I understand Professor Whitney's formula it is this: To find out the value of the proprietary interest of the insurance company; that is, to take the capital stock, take the net surplus and take 30 per cent. of the reinsurance reserve as reported to the State Department. Is that right?

Q. That forms the proprietary interest? A. That forms the pro-

prietary interest, and this percentage which he has taken here of the various classes of companies for a term of twenty years —

Q. (Interrupting) Let me show you the formula of Professor Whitney (exhibiting a paper to the witness). Will you discuss whether or not in your judgment, it is theoretically sound, before you take up its practical application to the various companies? A. I have examined this, Mr. Bruce, and I would say that the basis that he has pursued is quite an ingenious one, and I think is quite fair as means to an end. If I may be permitted to say that the record for any one year would not be at all conclusive, but taking it for a period of twenty years, I think it would be very fair. But I think that I ought to qualify that by saying — by calling attention to the fact rather, that an insurance company — if you take his proprietary interest twenty years ago on the basis that he is taking capital stock, net surplus, and 30 per cent. of its reinsurance reserve, which any insurance company can get as a liquidating proposition, that if the companies had not been in the insurance business at all, but simply had that in first class securities, and had compounded their interest, and add the appreciation in the value of securities, I think that they would have had a great deal of money to their credit, based on percentage if they had not been in the insurance business at all. With that modification, or with that fact in mind, I think these figures would show a very fair reflection of the situation.

Q. That is true of any business, isn't it; that the capital invested on the basis that if it had not been invested in the business but put out at interest, and the interest compounded, of course, there would have been an income. That is true of banking business or any other business, isn't it? A. That is true. Now, I would state furthermore, that taking this for a period of twenty years, I should say it was a fair method, but I should state, however, take the year 1893, which was the panic year. Of course, all securities got way down to bed rock, and that would show an abnormally bad year for all insurance companies, and in some companies they dropped three and one quarter million of their surplus that year. 1893 would not be a fair criterion. 1894 not either, for the 1st day of January, 1904, securities were way down to bed rock, and during the year 1904 they recovered from the depression, and they showed a very large appreciation to the insurance companies by reason of the com-

parative enhancement of all their securities. That would also be true as respects 1906.

Q. Just a moment, — You referred to 1904, instead of 1894, didn't you? A. I referred to the panic of 1893 and the succeeding year, 1894; the same with 1906, the year of the San Francisco conflagration. The value of securities went down low that year, and losses as everybody knows were decidedly abnormal. That would not be a fair criterion. 1907 would not be a fair criterion either, for the reason that the value of securities that year during the same panic got down to bed rock, and that would not be a fair reflection of the insurance companies' earnings according to Mr. Whitney's formula. 1908 would not be a fair criterion for the same reason 1894 would not be a fair criterion; that the basis for the year 1908 would be the low value of securities at the end of 1907; so it would show very much appreciated for 1908, by reason of the tremendous appreciation of the value of securities during 1908.

Then, some years we have very good years, loss-wise, and other years we have decidedly bad years, loss-wise, so that in any particular years, even in normal times it would not be necessarily a correct formula. But for any period of years which takes ups and downs in value of security, and good years and bad years loss-wise, it seems to me it is a very fair test.

By Mr. HUBBELL:

Q. As I get your criticism of the method, if you have any at all, it is that all of the gain, if there were gains by the appreciation of securities, result from the investment of the surplus and the capital, were in the nature of banking gains, rather than in the nature of underwriting gains? A. That is the idea. That is to say, take the insurance companies' proprietary interest, if you please, according to the formula in 1890, if there had been any large appreciation in the value of securities in the last twenty years, that would be a banking proposition and not an insurance proposition.

Q. So your comment logically would follow from that, that the showing made by the working out of that method is even a more favorable method, looking at it as purely an underwriting proposition, that the companies have actually experienced from their underwriting? A. Exactly so. That is the idea that I had in mind.

By Judge BRUCE:

Q. Your criticism refers, then, wholly to the banking side of the proposition; rise and fall of securities and increase in the amount of income from the securities? A. But the banking proposition is, I think, already merged in those figures.

Q. But have you any criticism to make on it from an underwriting point of view, eliminating the banking features; that is, eliminating the fluctuation in the value of the securities and in the amount of income from the securities? A. If that could be eliminated, why, it seems to me like it would afford a most excellent record. I think it may be on the criticism that it could be eliminated as an underwriting proposition.

Q. Is there anything further that you wish to say, Mr. Bament, upon the whole proposition of fire insurance? If so, we would like to give you the opportunity of stating it? A. I believe not, Mr. Bruce.

M. O. BROWN, called as a witness, being duly sworn, testified as follows:

By Mr. HURRELL:

Q. Mr. Brown, what is your business? A. Fire underwriting. Vice-President of the Westchester Fire Insurance Company.

Q. How long have you been engaged in that business? A. I have been engaged in the business of underwriting in various firms, from local agent up since 1869.

Q. You say from local agent up. Can you now recall the various steps of developing what you have been through in the underwriting business, without going into the matter in too much detail? A. Well, first a clerk in the office; afterwards a local agent; afterwards a special or traveling agent and adjuster; afterwards a general agent; then a manager; secretary of the company; vice-president.

Q. Do you hold any office in any organization of companies besides holding your offices as vice-president and manager of this company? A. I am chairman of the Committee on Laws for the National Board. I am a member of the Committee of Laws and Legislation for the New York Board of Underwriters. I think that covers my outside relations.

Q. Are you connected, as an officer with any of the exchanges; the rate making bodies? A. No, sir.

Q. Of course you are a member; — I presume your company is a member — of several? A. The company is a member; yes, sir.

Q. Now, Mr. Brown, I want to develop the entire organization of a company. For instance, will you describe the capital coming together to form an insurance company and getting the plant placed throughout the country? A. In our State we follow the statute in organizing, by filing a declaration of intention so to do, signed by not less than thirteen of the incorporators, in which declaration is also included our intended charter under which we would operate, which, being advertised I think two weeks is the requirement, the subscription being opened, and the stock paid in, we request the superintendent of insurance to examine our condition and report upon it. If it meets his approval, and the Attorney General approves the charter, we get a certificate authorizing us to commence business. The capital must be not less than \$200,000 paid in.

Q. Now, after the capital is paid in, and you have organized and elected your directors and officers, and so forth, what is the usual method of commencing business, or how do you start it? A. We commence first by locating ourselves in an office, preparing our policies and supplies and arranging to appoint local agencies throughout the territory in which we intend to operate. The usual start, and we always follow the same general rule, is to start first in the larger cities or larger towns and cities, where the business is in greater volume, and where our opportunity to start is more prompt.

Q. More what? A. More prompt. We get business more promptly. The agency plant is the first move that we make to get ourselves into a position to do business — appointing local agents throughout the cities and towns.

Q. Well, how does a manager determine where he is going to place his company in the various cities and towns? What is the thing he looks to? A. The local agency system, as it exists to-day, is pretty well established in so-called established agencies, where two or more companies are represented by a resident local agent. The manager or person employed by the company, would first probably seek to place his company in such established agencies in the various places which he would visit. If he should fail to find

the place there where he felt his business would grow, or he would receive a fair division of the business, he might appoint some other person not at that time engaged in the business. He might employ someone in the real estate business, or a clerk in a bank; someone whose time was not fully occupied with his duties and could give some attention to the business of the company.

Q. Now, the gentlemen you have been describing now are called the local agents. Now, what else is there to an agency system besides local agents? You have what are called general agents?

A. We have as between the local agents direct, and the company, an employe termed usually a special agent, or a field man. He is a man who is employed by the company by reason of his having a somewhat larger experience than the ordinary local agent, and they have developed into this position from a local agent: He is a salaried employe of the company, and has charge of a territory or field covering a certain area. He travels over and visits the various cities and towns and meets these local agents; appoints them, and confers with them, and in a general way supervises directly for the company their work.

Q. And he is, in a measure, their immediate superior officer, is he? A. He is practically the superior officer. He represents the company with the local agent up to the limit of authority.

Q. Well, what place in the system has the general agent? He is something different from the special agent, is he not? A. As the business of the company develops and grows, the system has been with practically most of the companies, with very few exceptions, to establish department offices under managers on salaries, or in other fields to establish what are known as general agencies. The department office would be more directly a company office, probably a salaried employe in charge as a manager, the company paying the rent and carrying the expense, and it becomes a branch of the home office and is usually located—in our position in the different cities located mostly near Chicago; in a central point for the West; geographically situated where the business can be transacted quicker and better in some ways, than it can direct with the office in New York or Hartford or some other location.

Q. Well, now, does the general agent or department manager in that part of the country occupy about the same relation to your

local agents in that part of the country than your home agent does in the territory nearer the home office and over which the specials have jurisdiction? A. Practically the same position. The manager in the branch office or general agent in the territory for which he is appointed appoints agents in that prescribed field. The agents report to them. They maintain an office and carry on the relations of the company with the local agents practically as the home office would do, reporting their transactions to the home office under conditions that are agreed upon.

Q. And whatever company organizations there are in that part of the country where your general agent or department manager has charge, I suppose—does he represent the company in such organizations as you have spoken of in Chicago; the Western Union and other organizations or companies? A. Yes. The department manager, or the general agent would represent the company in such an organization if it existed in their field, provided he so decided and the company so decided, for they might not in all cases do that.

Q. Now, touching the local agency system, Mr. Brown, will you describe what, in your judgment, should be the qualifications of local agents and what restrictions, if any, should there be to either from the companies or by the State? A. The local agent, with the man of authority from the company, and, by the conditions which have grown up about the business, either by the laws of the various States or by the decisions of the courts, is a very prominent factor in the business. He has a very wide scope of authority, and the companies in appointing the man with that large authority are very careful to try and select a man of reputation and ability and insight, and a man well known in their community. The local agents established in the business, like men in all other lines of business, establish a reputation for or against themselves.

By Chairman MERRITT:

Q. You mean the good will? A. Yes, sir, or they establish a reputation, which would be their popularity, and which would be to them the good will of the public, and they so establish a reputation for correct practices which brings them the confidence of the companies.

Q. There are bodies of local agents, are there not, as there are

national or associations of local agents; do you know whether there is? A. There are. There is a national organization of local agents, which takes in, I think, all the States, and there are other organizations which are local to the various States.

Q. How is the local agent compensated? A. By a commission on the amount of premiums which he secures for the company.

Q. The business in all towns and cities of any size, the local agent of one company is always the local agent of two or more companies, or from two up? A. Mostly always so; there are very few exceptions to that rule.

Q. Now, have you described all the duties of the company, as to inspection, the work of their agents, or is there anything else you wish to add to it with reference to the special agents? A. The special agent is a man who, in addition to opening the local agents and instructing them along the lines of the plan of the company and its operation; character of the business it wishes to insure, and the character and the amount of lines placed on known risk; he is also, in the interest of the company, an inspector; examining property in the various places where he goes, and reporting on it, as to its physical condition, and recommending to the company his opinion as to the lines they should carry on certain risks; communicating the same information to the local agent. In addition to that he adjusts losses that occur — not all losses, but as much as possible, for the company he represents singly, or, where one or more companies have a small loss — a large proportion of the smaller losses are adjusted by the special agent.

Q. What other expense must be figured in the starting in business of a company after they have gotten an office, and not yet gotten the business into full operation, besides the commission to local agents, salaries to general agents, salaries for the home office force, officers of the company, etc., what other expense is there? A. Outside of the home office expense, and outside of the commission to the agents, and the cost of supplies, and the various other expenses which enter into furnishing an office for business, there comes in the expense for the inspection business; the expense which the companies have placed upon themselves by the organizations of the inspecting bureaus in various locations. The inspectors are men of a character — of a training, somewhat different from the special

agent. They are usually men who have graduated from technical schools, mechanical engineers or electrical engineers or men with special ability in certain lines of that character. These inspection bureaus employ that class of men to inspect each manufacturing plant of large risks, and to make a detailed and specific report, which, when it is returned back to the bureau, is printed; a diagram of the building is made, and attached to the printed description, and sent to members of the inspection bureau.

Q. You mean to these companies? A. Those companies which are members of the inspection bureaus. All companies do not join all inspection bureaus. The method of the operation of some companies is different from others, and they do not especially seek that business, and they avoid the expense.

Q. And then, how does a company figure in starting its business, to take care of the expenses and adjustments? A. Outside of the adjustments which are made by our special agents, our field men, we have organized adjusting companies, adjustment bureaus. There is one located in New York city; which cares for business in probably all of New York State, possibly Connecticut, and some surrounding territory. A branch of that bureau is located at Philadelphia, and I think one in Baltimore and in Buffalo. The losses, when they occur throughout the country, are reported to the companies, and usually where a loss occurs on a property where five, six or either companies are interested, it is deemed best to have that settlement of the claim made through the adjustment bureau. It would be a matter of possibly a number of days, or a week or more; and rather than have the special agents of a number of companies, representing their individual interests, they combine and place it in the hands of one or more adjusters, sent from this adjustment bureau. It is found to reduce the expense quite materially.

Q. The old way used to be to have, on a large fire, twenty or twenty-five adjusters? A. Yes.

Q. For the various companies? A. Yes. The method of adjusting a loss through an adjustment bureau, where the amount of insurance involved is large, is found to be very satisfactory to the company, and is approved by our patrons. It reduces the number of people to deal with, to one or two, according to the size or charac-

ter of the risk. If a plant burns with \$500,000 insurance, and a large amount of material, and stock, also a large value of material, there might be two men sent to a loss of that kind, one for the amount on the building and the other on the books and material.

Q. And the adjustment bureau you speak of is an independent corporation, is it? A. Entirely independent. The companies belong to it if they so desire; but not all companies are members of adjustment bureaus; and not all companies have their losses adjusted through such a channel; but a large number do.

Q. In the operation of the adjustment bureau, then, two or more men are apt to be handling different company's business? A. Yes.

Q. So discrimination is reduced to a minimum between companies? A. There is nothing of that character; a loss is adjusted on its merits by the bureau.

Q. What expenses are companies put to, and how do companies keep track of the various risks they have in force throughout the country? I am speaking now of the map system? A. The expense — you didn't say what expense. The character of the expense I can describe. The business comes to the company, or to its branch office, or to its general agent, by a report of each, written by each local agent. The report, when received at the office of the company, or its branch office, is examined by the inspectors, men who have experience in that class of business, or passed along, under their direction, to assistants in their department of the work. The risks are mapped; entered on maps. The companies have maps of each and all towns and cities in which they do business; which maps represent each individual risk, describing whether it is a brick or frame building, giving its street number, block number, and the daily report of the agent; and there is a memorandum giving the street number and block number, so we can trace it, and map it on the map of that place. That enables us to ascertain the sort of risk it is; as to its hazard, and also to keep track of the congestion and the amount of risk, in any one block or location. At the end of the month the local agent reports to his company or to his branch office, by an account current, reciting the various risks issued through the month, and deducting his commissions from the gross premiums, showing the amount due the company; that has to go through the auditing and bookkeeping departments.

Q. How is that map system kept up? There are separate companies interested in doing that for the companies? A. There is the Sanborn Map Company, who practically have charge of that business completely. There are a few other companies, but the Sanborn Map Company practically handles all the work for the companies doing business, with a few exceptions. The Sanborn Map Company employs a great many inspectors and surveyors. I could not say the number, but it must be away up in the hundreds.

Chairman MERRITT: It is a stock company?

The Witness: It is a stock company.

A. They employ these surveyors, who visit all the towns and cities with some regularity of going, and take note of each individual building, of each change in any present building, make a survey of it to a scale, and submit it back to their company, or the factor, where it is printed, and prepared and placed in the hands of other men, who place these corrections, or changes, on the maps of the company, or the branch offices or the local agents; the system being the company placing all the corrections on the maps themselves.

Q. Does the home office of a company have the maps of all the cities and towns throughout the United States where it happens to do business or be permitted to do business? A. Most companies have; we have, and most companies have. Some few companies may not.

Q. And the local agent has a duplicate of that map? A. The local agent has the duplicate of that map.

Q. What is the approximate expense to an insurance company doing the large amount of business throughout the country, for this map system through the year? A. Well, it would be hard for me to estimate that. The initial expense is a heavy expense. A company starting to do business must buy these maps. They buy them, usually, along at intervals as they progress in the establishment of their agencies. But the maps in the office of a company doing a fairly general business must represent an initial expense of \$75,000 to \$125,000. To which is to be added the yearly expense of corrections all the time, and for new maps. The insurance companies and the Sanborn map people have agreed that it was necessary, at intervals of some years, to make new maps of towns and

cities, after four or five or six or eight or ten years. Take, for example, Seattle, Washington; a new map is necessary of Seattle after five or six years; and in rapidly growing and developing communities a new map is necessary; and then, where there are many corrections, it is necessary to have a new map, or to add to the map more sheets.

Q. Your estimate, as I understand it, for a new company to get maps covering substantially the large cities of the country, was between \$75,000 and \$125,000? A. The cities and towns of companies establishing a general agency system; not including the smaller towns. The companies of medium size might have in the United States an agency system of from three to five thousand agents. Companies of the larger size and older established in the business may have ten thousand. Many have ten thousand agents in the United States.

Q. That is, a company proceeding to be admitted to the various States, has to undergo an expense of getting maps that pertain to the territory in which they are going? A. As business develops the company starting requires these maps; that makes the initial expense heavy.

Q. After the initial expense to the companies, after they have incurred that, what is a fair compensation which a company doing a good business would have to pay to the map company supplying these maps for keeping the maps corrected to date? A. I could not tell you exactly, Mr. Hurrell, without conferring with our people in the office, or looking at the books; I could not say positively; there is a fixed charge for the corrections.

Q. I was figuring. About how much do you think they are? A. Well, it is quite a considerable bill, but I would hate to state an amount on the stand without knowing positively. I could get you that information.

Q. Well, do we understand you, Mr. Brown, to say that the company starting in not to exceed three States, that the initial expense for maps alone would be somewhere around \$75,000? A. Possibly not in three States, but in a few towns in the State—I am speaking of the company that is doing about the average agency business; in the larger companies, with a large number of agents; not in the other class of companies, with a very small number of

agents; but about the average of the agency company, such as mine is, and others of similar size.

Q. You say the Sanborn Map Company is the one that takes care of this business? A. Yes, sir.

Q. Has it a New York city office, in case we wanted that information more accurately? A. They have. It used to be in the Bowling Green Building. I have forgotten where it is now, but they have a New York address. The factory is in North Pelham.

Q. What is that? A. Up in Westchester county, I think North Pelham.

Q. That is where their place is? A. Their factory is.

Q. Now, have you anything to add to your testimony as to the controlling things, which must govern in the running of the business? A. Well, after your business is started, of course you have in the operation of the insurance company, you have three principal, prominent factors always before you. You have always got the question of your losses and your expenses, and to maintain your reserve, which is required by law, which is an independent premium account. The losses might be said to be as important to the fire underwriter as cost of merchandise to the merchant. It is the prime cost of the business, and naturally it is closely allied with the income. We cannot look at our losses and consider their relation to our business without primarily putting it against the income. So that we cannot consider ourselves free from premium income when we consider our losses and expenses.

Q. What is the accepted ratio of losses and the accepted ratio of expense to a dollar premium income, that the companies expect from their experience? A. The companies all hope for a lower loss ratio than they usually have. But it is a generally accepted theory in the business, which I think we inherit in this country from Europe, that the loss ratio should not exceed 60 per cent. of the premium income. In naming 60 per cent. of the premium income you name a varied income. In our own country, and in various parts of it, and also in countries throughout the world, the experience of companies in Europe who do a business over the world has been with an average of ten or twenty years taken with another ten and twenty years and carrying it out through for from 60 to 75 or 100 years and averaging this for the entire period taken from business all

over the world, they have concluded that there will be an average loss rate of between 56 and 60 per cent. of the income. Now, in England, the premium rate would be much smaller than it is here; probably not more than one-third, on an average. In France it might be less; in Germany it is much smaller than it is here. But the accepted theory is that the loss will follow the income to between about 56 and 60 per cent. of it, based on the conditions which govern the rate. And that is a fair average of the business in the United States. When you bring it together as a whole; but it is a very widely varying income to the per cent. if you take it in individual cases.

I have a statement here, Mr. Hurrell, which will give you a little more thorough information on that. It was a statement I had made up last year, when I was invited to be present before the investigation made by the Illinois Legislature; I took from the agency books the amount at risk and the premium income thereon, and the losses thereon, for a period of 29 years. I percented the amount of premium to the amount of loss, and the amount of premium to the amount of loss made the risk. I got what you call the burning per cent. to the premium income and the loss per cent. to the premiums. There, I will show you, for instance, it shows (witness illustrates and points to compilation of figures). Alabama, 29 years, have paid an average rate of 1.60, and the losses on that have been .86 per cent. The losses to the amount of risk have been 64.2. In New Jersey they have paid an average rate of 1.23; loss rate—rate of premium to loss rate, 53.04; loss rate, .65; loss rate to the amount of risk, 33.4. New York State shows .67 loss rate, .37 loss rate to premium, .55.

Q. Now, what is that second column? What is that a percentage to? A. In making this up I directed that the total amount at risk, and the total premium income for the period; took those amounts, divided the premium income by the amount of the risk, which gave the per cent. of the premium on the amount at risk. And the same way to get the amount of loss to premium; and the same way to get the amount of loss against risk.

Q. Say, for instance, the New York ratio paid for 29 years being .67, that means that for every \$100 of insurance it cost 67 cents?

A. That is what it means; and that out of that 67 cents we paid 55

per cent. of it; in other words, we have left out of the 67 cents 45 per cent. of it.

Chairman MERRITT: That 45 per cent. was devoted to what? A. Expenses of operating, expenses, and if any remained over to provide a surplus out of which dividends would be paid.

Q. Now, this third column, being entitled "Percentage of loss to risk, 29 years." Does that mean that for the 29 years, out of every \$100 of insurance in force, there was a natural loss on that insurance in force of 37 cents? A. Yes, sir.

Chairman MERRITT: On each hundred or each dollar?

The WITNESS: On each dollar. In other words, 37 of 1 per cent.

Q. That is, out of every dollar of insurance in force, practically a third of one per cent. has been loss? A. .37 of 1 cent on the dollar.

Judge BRUCE: Three cents and seven mills A. Yes.

Judge BRUCE: Out of every dollar's worth of insurance at risk, is that right, Mr. Brown?

The WITNESS: Yes, for which we receive 6 cents and 7 mills.

Q. This is the first statement; I asked you did this mean that out of every \$100 of insurance in force there was an actual loss by fire of 37 cents. My question is, out of every dollar of insurance written, or out of every \$100 of insurance written, did your losses show .37? A. Whatever there is there, yes. Because we get .67, and we take up 37 cents on a hundred.

By Judge BRUCE:

Q. That is, not a little over a third of the risks were destroyed; but on a hundred dollars' worth there was 3 cents and 7 mills destroyed; is that right, Mr. Brown? A. Let us see.

Q. I understand that out of every dollar at risk 3 cents and 7 mills are destroyed; is that right? A. That is the way that would show there; the percentage on that \$100; 67 cents is received and 37 lost.

Mr. HURRELL: For every hundred dollars at risk you received 67 cents premium and actually paid out 37 cents in losses.

Chairman MERRITT: Then, the losses as compared to the total risk will be practically a third of one per cent.

Judge BRUCE: Who prepared this schedule?

The WITNESS: A clerk in the office. The percentages were made by a man who is familiar with them. I offered that before the Illinois Investigating Committee.

Mr. HURRELL: I offer this sheet that witness has been referring to in evidence.

The CHAIRMAN: Mark it in evidence, and spread it upon the record.

(Paper thus identified marked Exhibit D of this date.)

State	Average rate 1908	Average rate 29 years.	Per Ct. loss to risks 29 years	Per Ct. loss to Premiums 29 years.
Alabama.	1.69	1.60	0.86	54.2
Alaska.	2.40	2.47	0.44	17.3
Arizona.	2.59	2.52	1.48	58.7
Arkansas.	1.73	1.89	1.07	56.6
California.	1.92	1.63	1.73	105.5
Colorado.	1.54	1.58	0.70	44.4
Connecticut.	0.99	0.96	0.43	45.0
Delaware.	0.81	0.83	0.40	50.3
District of Colum- bia.	0.57	0.60	0.27	34.0
Florida.	2.18	2.07	1.47	71.3
Georgia.	1.39	1.32	0.72	54.9
Hawaii.	1.81	1.80	0.46	25.6
Idaho.	2.31	2.46	1.38	56.1
Illinois.	1.24	1.18	0.58	49.0
Indiana.	1.15	1.19	0.63	53.0
Iowa.	1.36	1.49	0.67	45.0
Kansas.	1.22	1.28	0.66	51.8
Kentucky.	1.33	1.32	0.78	58.8
Louisiana.	1.56	1.27	0.64	30.7
Maine.	1.54	1.42	0.89	62.4
Maryland.	1.02	0.84	0.81	96.8
Massachusetts.	0.98	0.99	0.60	60.4
Michigan.	1.29	1.38	0.70	51.2
Minnesota.	1.37	1.40	0.79	56.1
Mississippi.	1.83	1.86	1.11	59.4

State	Average rate 1908	Average rate 29 years.	Per Ct. loss to risks 29 years	Per Ct. loss to Premiums 29 years.
Missouri.	1.09	1.15	0.66	57.3
Montana.	2.29	2.24	0.87	39.0
Nebraska.	1.17	1.40	0.60	43.2
Nevada.	2.56	2.57	0.88	34.2
New Hampshire... .	1.21	1.23	0.65	53.4
New Jersey.....	0.94	0.86	0.42	49.7
New Mexico.....	1.80	1.89	0.95	50.3
New York.....	0.78	0.67	0.37	55.0
North Carolina....	1.19	1.38	0.75	54.6
North Dakota....	1.87	1.93	1.19	61.6
Ohio.	1.13	1.12	0.60	53.8
Oklahoma.	1.37	1.52	0.75	49.4
Oregon.	1.81	2.01	0.87	43.6
Pennsylvania. . . .	1.14	1.11	0.56	50.8
Rhode Island.....	0.89	0.93	0.47	50.3
South Carolina....	1.30	1.29	0.70	54.8
South Dakota....	1.49	1.64	0.73	44.7
Tennessee.	1.48	1.51	0.98	65.3
Texas.	1.45	1.58	0.92	58.1
Utah.	1.48	1.66	0.63	38.2
Vermont.	1.34	1.38	1.82	59.9
Virginia.	1.43	1.40	0.76	54.0
Washington.	1.86	2.10	1.00	47.6
West Virginia....	1.59	1.43	0.72	50.2
Wisconsin.	1.29	1.41	0.71	51.0
Wyoming.	1.91	1.92	0.66	34.6

Q. If you have any further comments to make, or anything to offer, you may do it before any questions are asked? A. Mr. Hurrell, you were asking as to the losses to the general percentage of loss to income.

Q. Yes. A. I was going to explain a little further to you the varying rates of premium charged to the average percentage of losses in various locations, or caused by many conditions, of course.

Q. Yes, go ahead. A. For instance, now, we show a variety of conditions. We find in Arizona it was necessary and the average

rate was for 29 years, 2.50, on which there was a loss rate of 1.48. In Illinois the average rate for 29 years was 1.18, and a loss to premiums in Illinois was 49 per cent. of the 1.18. In Indiana the average rate for 29 years was 1.19, and the average loss on that was 53 per cent. of that income. The States having valued policy laws, for a fire, get less rate. Iowa pays an average rate of 1.49, with a loss rate of 45 per cent. Kansas pays 1.28, with a loss rate of .518.

Q. Both Kansas and Iowa are valued policy States? A. Yes. Kentucky pays a rate of 1.32; loss to premium, .588. Louisiana pays 1.27, with a loss rate of .577. Mississippi has a valued policy law, and pays an average rate of 1.86, with a loss rate of .594.

Q. What is that? A. Mississippi.

Q. What is the rate there in that comparison for the State of New York, the average rate for 29 years? A. The average rate for 29 years is .67 of 1 per cent., with a loss rate of 55 per cent. on the premium income.

Q. How does that average rate of insurance compare with the other State, that is, high or low? A. It is the lowest rate of any State in the Union. Connecticut is next with 96 per cent. premium for 29 years.

Q. The District of Columbia there has a lower rate than New York? A. The District of Columbia is lower, but it is one city. You see, the District of Columbia is .60; that takes in Washington, practically one city.

Q. So that does not offer the same average as a State itself? A. It is not considered as an average. It is simply put in to fill in the requirements.

Q. Now, you have spoken of, or called attention, rather, to the higher rate, at least those higher than New York rate. Do you know, Mr. Brown, whether the existence of the valued policy law in those States has tended to increase or decrease rates. First, in this list, the valued policy States are marked with a letter X? A. Yes.

Chairman MERRITT: Have you in the record a definition of valued policy?

Q. I will ask you, generally, Mr. Brown, what do you understand by the expression "valued policy?" A. The valued policy law, which describes the situation, varies in different States. It is not

similar in all States. But the general proposition embraced in the law is that when a company, or companies, insure a fixed property, for a fixed amount, in a case of a total destruction of that property, the face of the insurance shall be taken as the value of the property.

Chairman MERRITT: That is what Mr. Bervoid called "sound value" ? **A.** Well, the value of property, the amount of value to be paid.

Chairman MERRITT: You would not have to appraise it? **A.** You do not appraise it. The requirements as to the value of the property, per se, under the law, is fixed by the amount of the insurance.

Q. That is, if they insure a piece of property for \$10,000, and there is a total loss, in the absence of fraud, they pay \$10,000? **A.** Yes, sir. Even though it might be shown, or known, first off, that the value of the property was \$7,000, but having placed upon it an insurance of \$10,000 in the State where these valued policy laws exist, the requirement upon the companies, and they have agreed to recognize, as the value of the property, or the amount of the claim, the face of the policy. That is the substance of the valued policy laws in the various States.

By Mr. HURRELL:

Q. That is the result when there is no salvage, when everything is burned? **A.** Well, that has been before the courts in several States, and it is practically decided to recognize that a severe destruction of the property is a constructive total loss of it; and the courts have so held. The remaining portion of a wall——

Chairman MERRITT: If it is not worth taking away? **A.** Yes; that matter has been decided.

By Judge BRUCE:

Q. Now, Mr. Brown, I understand that we have, as States having valued policy laws, Arkansas, Delaware, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, Ohio, Oklahoma, Wisconsin, South Carolina, Texas, Virginia, Washington and Oregon? **A.** That is my understanding.

By Senator WAGNER:

Q. Mr. Brown, suppose, under a valued policy law; suppose the face of a policy was \$10,000, and the property, which was partially destroyed, was worth \$20,000; that is, the property insured was worth \$20,000, and there was a fire, and there was the destruction of property worth \$10,000, how much would the insured receive? A. \$10,000. The valued policy has no influence on a partial loss of less than 50 per cent., where the building is capable of being repaired.

Q. It applies strictly to what was intended to be a total destruction of the property, and under the rulings of the courts where these questions have come up? A. The courts have said that where the property is destroyed for the uses for which it is intended it is constructively a total loss, and the case you have described would not come within that ruling.

By Judge BRUCE:

Q. Did I understand you to say, Mr. Brown, that in the State where they had adopted the valued policy law it had operated to increase the rates? A. The sentiment of the insurance companies transacting business in those States has been that it was to increase the hazard, and it is to-day the tendency to influence an increase of rates. But you will find in quite a number of States who have enacted the valued policy law that they have also enacted other laws, which have prevented insurance companies from acting with any kind of harmony in the inspection of rating of business; and it might happen that while the sentiment of the companies would require, in such States, an increased rate, temporarily they might not receive it.

Q. I notice that the State of New Hampshire, which has a valued policy law, has an average rate of 1.22 and the State of Vermont, geographically situated about the same, is not a valued policy State and has a rate higher than New Hampshire, 1.34. I notice that the State of Ohio, which is a valued policy State, has a rate of 1.13, and the sister State of Indiana, which is somewhat similarly situated, and of the same character, which has no valued policy law, has a higher rate, of 1.15; and Illinois, which has no valued policy law, the rate is still higher, 1.24; and the State of Pennsylvania, which is

a valued policy State, has a rate of 1.14, while the neighboring State of Ohio, which is of the same general character, but is a valued policy State, has an annual policy rate of 1.13. That would seem to indicate, without following the percentage through further, that in many cases, at least, States which have a valued policy law have a lower rate than their sister States of the same general character and geographically much the same situation; isn't that true? A. That is; if the record shows that. But that is not especially influenced by the valued policy law. Now, start with Vermont; the loss rate of the stock companies in Vermont might not be a fair index as to the result; for a large portion of the business there is carried by the mutual companies.

Q. It is not a fact, then, is it, that in all States where valued policy laws have been adopted that the rates have advanced? A. It is a fact, Judge Bruce, that in all States where the valued policy law has been adopted that the hazard has been increased, but it is true that the companies, by force of other conditions, have not been able to receive an adequate price for the policies placed in those States.

Q. If the losses have increased, the rate should have advanced in proportion, should they not? A. They should.

Q. And as the rates for insurance are fixed in the various parts of the country by organizations, commonly known as Fire Insurance Exchanges, or organizations of similar character, the companies had the power to advance the rate, did they not? A. No, sir.

Q. Why not? A. Because they do not have, in those States, organizations such as the Fire Insurance Exchange or other organizations. In many States there is absolutely no uniformity of action among the companies.

Q. That is, they have there the Anti-Compact Power? A. Yes, which is a law that prevents organizations similar to our Fire Insurance Exchange, which fixes rates? A. Yes, sir.

Q. If that be true, then, the adoption of the valued policy law, and anti-rating bill, or anti-compact bill, has in those States resulted in a lower rate, has it not? A. No, sir, it has not resulted in a lower rate.

Q. But it, at least, has not resulted in an advanced rate, has it, according to those statistics you have submitted? A. It would be

difficult to show that by any table of percentages, Judge Bruce, for the reason that other conditions enter into a hazard in a State.

Q. But take two States like Vermont and New Hampshire; both are agricultural States, geographically lying near each other, one having a valued policy law, and the other not, and the one having the valued policy law has a lower rate than the one that does not have it; take the same thing, in the case of Ohio and Pennsylvania, the same thing with Ohio and Indiana, States which in their general resources and character are practically the same and which are geographically situated about the same.

(No answer.)

Q. Do you know what States, Mr. Brown, have an anti-compact law? A. I could not say off-hand; I could ascertain it, I think, Mr. Bruce, you have not quoted this exactly right.

Q. If I misquoted it I shall be glad to correct it. A. You spoke of Illinois and Indiana.

Q. No, Indiana and Ohio. A. Illinois the rate is 1.18, Indiana 1.19, in Iowa 1.49, in Kansas 1.28, in Kentucky 1.32; Louisiana 1.27. The last four being valued policy States.

Q. Of course the State of Illinois contains the large city of Chicago. It would not be fair to compare that with the State of Indiana, which has no large city that compares with the city of Chicago. I was taking States like Vermont and New Hampshire, Ohio and Indiana, that were similar in general character. A. Now, where do I stand on the question; what are you asking me?

Judge Bruce: There is no question, I believe, before you.

By Mr. HURRELL:

Q. Mr. Brown, what is your judgment about the valued policy law, as to whether it is good or bad legislation? A. Well, my personal opinion is it is bad legislation.

By Judge BRUCE:

Q. You mean, Mr. Brown, for the companies, or for the insured? A. For both. It encourages the temptation which might exist to do wrong and remove from the property owner the influence which ought to be around him all the time to protect his property, rather than to be careless of it and be willing that it should be destroyed.

Q. It would also operate, would it not, to require a greater amount of diligence on the part of the agents of the insurer, to wit, that they should not accept insurance on a piece of property in a larger amount than the value of the property? A. The agent who thinks he is insuring the property for the owner might use that judgment, but another agent might duplicate the amount of the insurance without the knowledge of the previous one.

Q. But principals have to be responsible for the unfaithfulness of agents, do they not? A. Certainly.

Q. Every large mercantile house in New York has to be responsible for the actions of its agents in making contracts for it; why should not the insurance companies be held to the same responsibility for the acts of their agents? A. The insurance companies are held strictly responsible for the acts of their agents. But in these cases the valued policy law steps in and enables the property owner, in carrying out a plan which he may have had in mind, to secure a larger amount of insurance than the value of the property.

Q. That plan could not be carried out without the co-operation of the agent of the insurance company? A. Certainly it could.

Q. How? A. By dealing with different agents and different companies without the knowledge of each other.

Q. But an agent writes a risk upon a piece of property without ascertaining how much insurance is already carried, does he not? A. He might, but the contract of insurance usually gives permission for another insurance, and the owner of the property would probably place a higher value on the property than would be justified by the policy he places on it.

Q. If the company accepts risks in excess of the value of the property and accepts the premiums on that risk, the risk being assumed by its own agent, why shouldn't it pay the amount of the risk upon which it accepts premiums? I may say I have no preconceived views on the question at all, Mr. Brown. You are a man that has had experience in that line; I am a man without any experience; I simply want to get your point of view. A. You ask the question, why the companies that over-insure a property should not be held responsible and pay the amount? The valued policy law, in the States where it is in force, requires it; and it encourages the

owners of property to over-insure their property, knowing they are protected for any carelessness of their own, or of others, which might cause the destruction of the property. In so far as insurance companies become a party to that they encourage crime and they encourage destruction of property and possibly destruction of life. Without the valued policy laws the companies would not encourage that directly on the part of the property owner. But in the States where the valued policy law exists, we are forced to meet the requirements, and pay an amount in excess of the value of the property, always offering an inducement to the property owner to carry a larger insurance, and to be willing that it should be realized upon.

Q. Couldn't that be obviated by the representatives of the company refusing to write risks that were in excess of the value of the property? A. Not under the average valid policy laws. In the State of Minnesota they have a restriction, I think, there, which fixes the value of the building in the form of policy and limits the value of insurance. That is the only State, I think.

By Mr. HURRELL:

Q. What is that? A. The State of Minnesota.

Q. It does what? A. They fix the value of the building in the form of the policy; in the policy the value of the building is fixed, and the amount of insurance cannot exceed the value of the policy.

By Chairman MERRITT:

Q. Then they must have an appraisal, or a survey, to get at that; or assume one? A. It is assumed, I suppose, on the statement of the owner.

Q. If there is any relation between the valued policy law and incendiarism, as it practically works out — you spoke of crime — A. It seems to me that human nature, as it exists throughout the world, protection under the valid policy law would encourage people to be careless.

Q. Is that the opinion of the insurance world? A. Yes, sir, that is known.

By Judge BRUCE:

Q. Is that the experience of the insurance companies, based upon operations in the States where they have a valued policy law, compared with States where they do not have it? A. I could not answer that, by saying that I have any real knowledge on that point; but that is the opinion on the part of the companies, and it is generally accepted, based on the reports that come to the companies from year to year.

Q. Do you think it equitable that the company should maintain a rate in a non-valued State lower than in an adjacent valued policy State? A. Certainly, if the circumstances justify it. The rate is not fixed on the valued policy itself; it is fixed primarily upon the hazard of the property insured.

Q. Well, if there is a larger percentage of loss in valued policy States, due to the temptations which you have mentioned here, why should not your rate-fixing body advance the rates in those States, and lower the rate, if there is a decreased amount of loss, in the States which do not have the valued policy law? A. That was answered before, Judge, by the statement that in these States with valued policy laws there are also anti-compact laws, which prevent the companies from working in harmony along any lines, either as to rates, surveys, or any other.

Q. Then, the anti-compact laws naturally work to a reduction of the rate, do they? A. Not always; they might temporarily, but not always.

By Mr. HURRELL:

Q. Speaking still on this valued policy and the responsibility of agents, about how much, Mr. Brown, take the ordinary risk of say \$10,000, how much does the agent of the company get out of that risk? A. Well, you usually, the ordinary building of the value of \$10,000, how much does the agent of the company get out of that policy might produce a premium of \$75 or \$80.

Q. About how much would be the agent's compensation out of that, would you say? A. 15 per cent. of the premium.

Chairman MERRITT: Annually? A. I figure the annual rate on the ordinary mercantile risk; for a boarding house, or term

risk, he would get twice the annual rate, and get the commission on that.

Q. So that the agent's compensation for writing that insurance would be about how much? A. About \$11.25.

Q. \$11.25 per year? A. Per year.

Q. Now, as a practical matter, is it possible for companies, at the rate of compensation which these agents earn, to get services from them, to take care of the various matters that should be taken care of to protect the company, where valued policies are written? A. It would be impossible to get from local agents such services as would keep the insurance on any class of property within its value, either in a valued policy State or in any State; but the judgment of the agent is influenced largely by the judgment of the owner of the property.

Q. Do you know whether you pay the same commissions in a valued policy State as in a non-valued policy State? A. I think you do.

Q. The Western Union covers some valued policy and some non-valued policy States, does it not? A. Yes.

Q. And there is one rate of commission prevailing throughout that territory, covered by the Western Union? A. Yes, sir.

Q. Does the valued policy law operate to increase the charge to the agents? A. You mean the compensation to the agents?

Q. Yes. A. No.

Q. That is, the compensation to the agent is fixed by the particular company organization covering the usual territory in which there may be some States of valued policy law, and some non-valued policy States? A. The valued policy law has no bearing on the compensation of the agent.

Q. Now, what ordinarily is the incentive to the local agent, is that he works for a commission? A. Yes.

Q. And now, do you find in practice, Mr. Brown — you have testified you have been in this business since 1860, and you know something about the local agents; is he working for the good of his own pocket, usually, or for the good of his company? A. Well, the local agent is like all the rest of us, human. There are a great many of our local agents careful, conservative, excellent men. We have men acting as agents for our company that have been continu-

ously representing us for 35 or 40 years; men of high standing, and very careful men.

Q. I am getting at the real public relation between valued policies and the agents, that the companies must depend upon. Now, for instance, if you were running a company now in a valued policy State; you got your certificate of admission, and entered a valued policy State; now, your agents there will all be new to you? A. Yes.

Q. You go in and establish agencies, you testify? A. Yes.

Q. And the larger the amount of insurance written on the risks, either under the valued policy or the non-valued policy, the greater is the commission of the agent, isn't it? A. Yes, sir. The larger the premium — the larger the amount of the risk, the larger the premium, and the larger his commission.

Q. So, if there is any tendency toward any particular practice, the interest of the local agent, as far as his pocket is concerned, is towards writing as much insurance as he can? A. That would seem the natural result of the operation of the human mind.

Q. Do you know whether or not the committee of the board that has charge of statistics has gathered and collected the information concerning arson, so as to make the statistics in this respect between the valued policy States and the non-valued policy States? A. No, sir; I do not.

Q. You don't know whether they have? A. No, sir.

Q. If any committee, or any organization of the companies, would have that matter in charge, it would be very likely to be that committee, would it not? A. I think possibly, that they cover the whole country. Their estimates would cover the United States regardless of subdivisions of those states.

Q. Do you know whether in the States that have a valued policy law it is customary to have a law which prevents a man from insuring a building, or any risk, in two or three different companies, for the full value? A. There could be no such law.

Q. There could be, couldn't there? A. The right of contract seems to be open to individuals; it is between the companies and the property owner.

Q. Take Minnesota, for instance. You mentioned that the law there requires a building to be valued? A. In the form of a policy.

Q. What do you mean by "in the form of a policy?" A. Well, it is a rider on the policy, which will state in general terms, "It is understood and agreed that the value of this building is not in excess of," — \$85,000 or \$25,000. I could not give you the terms. I might get the form for you. It fixes a limit as to the value of the building, and it carries with it information as to the amount of the insurance.

Q. That is, the value of that building in the policy. Now, do you claim there is nothing to prevent in those States that same building being covered by another policy at a different value? A. That I could not answer.

Q. You don't know that? A. I couldn't answer that. That is a new view of it, I haven't had.

By Chairman MERRITT:

Q. The policy would contain some declaration on the part of the insured stating that he put some value on the property? A. The chances are I think that the rider of the form was first the declaration of the insured and is the value that must be given on all policies he takes on the property.

Q. And as to what other insurance he has? A. And as to the value; the same value must be on all.

By Mr. HURRELL:

Q. The companies require that of their own motion? A. I think the law prescribes how it shall be done.

Q. Now, in those States, do you know,— take your own company, you operate in some of those States, don't you? A. All of them.

Q. Do you take any precautions to look up your agents in those States, more than you take in the States without that law? After you write that kind of policy are your inspections any more rigorous? A. I am not in a position to answer that, because I am not associated closely enough with the details of the work to answer that question.

Q. Is there any particular officer of your company that we could call to develop that information from? A. The business of most of the valued policy States, I think, is recorded in our western office.

Q. I suppose you have the business done in New Hampshire here? A. Yes.

Q. We can get that probably from some other source? A. Yes.

By Senator WAGNER:

Q. Mr. Brown, are you in favor or against anti-compact laws? A. I am opposed to them.

Q. Why are you opposed to it? A. I am against it, for the reason that it prevents the free operation of the business of the company along lines which, as manager of the company, I feel we should be entitled to have. An anti-compact law in any State, or of any source, is a serious interference with the uniformity of action, in that it destroys any organization among companies for other purposes equally as important as the making of rates. Organizations for inspection, and organizations from any other conditions are equally as important as making rates; but in States where combination of any character is prevented the operations of the companies are hampered.

By Mr. HURRELL:

Q. Do you know from a reference to that table what the anti-compact States are? A. Judge Bruce called them off.

Q. The Judge called your attention to the valued policy States not the anti-compact States? A. No, I do not know.

Q. I want to ask you, in comparing rates, to get at the value of this table, in comparing rates, isn't it true that this table is of course apt to be misleading, both as to the low-rated States and to the high-rated States for the reason that in the high-rated States the class of construction might be such as to require a higher rate? A. Certainly; the rate is not based directly in any State, on the anti-compact law; at the initial start of the business the rates are based on the physical hazard, ascertainable hazard of the risk.

Q. So as to the anti-compact law, or as to the valued policy law, the fact that, for instance, New York, the rate is only 78, where there is no anti-compact law, it could not be conclusively said that that is the reason singly and alone? A. It could not.

Q. Nor could it be said that the existence of a valued policy law,

in any state, singly and alone, caused the rate to be higher or lower, because this average is based on other considerations? A. Yes.

Q. Of which that is only one? A. That is only one.

By Judge BRUCE:

Q. But if you take the two States, Mr. Brown, Vermont and New Hampshire, there isn't much difference in construction there; they are practically of about the same general character; the two States are adjoining States, are they not? A. Adjoining States are not always of the same physical hazard.

Q. Take New Hampshire and Vermont, what would be your judgment, based on your experience, as to whether there was much difference in the general class of construction, or the degree of hazard, as to the risk in those two States? A. Well, the probabilities are, that the rate would be higher possibly in Vermont because of many other conditions, outside of the consideration of the valued policy law.

Q. Take Ohio and Indiana? A. Well, the conditions, Mr. Bruce, in any State, are not based strictly on the valued policy law. Many other conditions would enter into it. It would only be a factor in the consideration.

Q. What I had in mind was simply this, Mr. Brown: That the adoption of a valued policy law, so far as this schedule you have brought here is concerned, does not necessarily result in an increase of rates, but that many States which are similarly situated, like Vermont and New Hampshire, Ohio and Indiana, or Ohio and Pennsylvania, that the valued policy States have a lower rate than States which do not have the valued policy law; therefore, isn't it a fair deduction, that the adoption of the valued policy law has not operated in those States at least to increase the rates? A. As a statement of fact, Mr. Bruce, the valued policy law is a factor of hazard in the business. It is so considered, based on the experience of the companies who have felt the matter of losses in States where it has been enforced. But in spite of the fact that it may increase the hazard, there may be other controlling causes that would prevent the company from raising the rate in such a State, that they should receive. It don't follow because of the enactment of the valued policy law, in any State, that other conditions have not prevented

the companies from fixing the value on that hazard, and charging for it.

By Chairman MERRITT:

Q. These valuations here, these statistics, are from the operations of stock companies entirely; they do not take the mutuals into consideration? A. Stock companies entirely.

Q. And the character of the hazards taken by the two different kinds of companies are quite distinct, as a rule? A. As a rule; the mutual companies possibly are more confined in area to counties and cities for instance.

Q. They are more rural? A. Yes.

Q. In that sense, perhaps they differ? A. Yes; and there is another class of mutuals that select a very high grade of manufacturing plants at a very low rate of risk. The stock companies cover the average property of the country.

By Judge BRUCE:

Q. The mutuals of Massachusetts, operating in commercial centres, charge not quite as much as they do in rural districts? A. No, they do not.

Chairman MERRITT: The Committee stands adjourned to 2 o'clock.

Recess until 2 o'clock.

AFTER RECESS.

2:25 P. M.

JOHN. H. STODDART, called as a witness and being duly sworn, testified as follows:

Examination by Mr. HURRELL:

Q. Mr. Stoddart, what is your business? A. Fire insurance.

Q. With what firm are you associated? A. My firm, A. & J. Stoddart, are the general agents for the business of the New York

Underwriters Agency, and city agents throughout the United States, and act in behalf of the Hartford Fire Insurance Company.

Q. You act in behalf of just one company? A. Yes, sir.

Q. Will you explain that a little more fully? That is, the fire underwriters that you just spoke of? A. Well, the New York Underwriters' Agency is simply the name of our agency office, while it is the personal appellation of our firm, the New York Underwriters' Agency. We are their general agents, and general agents for the Hartford Fire Insurance Company.

Q. How long have you been in business? A. Thirty-five years.

Q. In what capacities have you served? A. I served as clerk, and as special agent traveling in the field, as assistant general agent, and as general agent.

Q. Mr. Stoddart, there has been outlined to the Committee so far the extent of the fire insurance business; the organizations have been mentioned, some of them have been explained, and this morning Mr. Brown put before the Committee in outline the machinery used by a company in starting in and conducting its business. Now, if you will just explain to the Committee how that machinery works, as to the placing of the risks and the general carrying on of the business. Take it up from the time they start. You will assume that they have actually been running; that they have got their general agents and their local agents doing business. Start in from the time of doing business. Take it up from that point and explain the methods and how it works. A. We will suppose that a building is erected in some outlying place where the firm has an agent. The agent will go to the owner of that property, and solicit the insurance, unless, perhaps, the owner has come to the agent. He will make a contract with the owner to insure his property for a certain amount, and for a certain price. In large cities when that contract is made, the agent delivers what is known as a binder. That is, it is making a written report of that fact, and it is brought to the agency for the policy. It takes some little time to write out the policy, and this is good, in a large city, as evidence of the contract. It is not used in small places because the people there know the agent so well that it does not seem to be necessary.

Q. Where it is not used in small places, where it is meant to be effected, how, as a matter of fact, is the insurance effected before

the policy is delivered? A. The agent says to the owner, "I will issue a policy for \$5,000 on that building for such and such a premium," and the owner says, "All right." That is the completed contract as far as it has gone.

Q. Into that preliminary contract is read the standard policy?

A. Yes. In a large city where most business is placed through brokers, where the personal relations of the parties are not so close, this form of binder is used. It is simply a memorandum of the fact that the insurance has been issued. This is taken up or becomes void when the policy is issued.

Mr. HURRELL: I offer this in evidence.

(Paper received and marked Exhibit E.)

Q. And that simply is a memorandum under which various companies' names are put with the amounts of the insurance that the agent is placing in those companies on this particular risk? A. It is.

Q. And this Exhibit E reads: "Each of the undersigned companies, for itself only, insures the property above described for the amount set opposite its name until the issue of its Standard Policy on the same in place hereof, or until twelve o'clock noon of the next business day after the risk is declined, by notice to the assured or broker placing the risk. But in no event shall this insurance be in force over fifteen days from the date of commencement of liability hereunder."

Now, how long in practice, in large cities, does it take for the companies to make up their minds whether they want to go on the risks? A. In most cases in large cities the issuance of the binder would be conclusive. The risk is considered as made when the binder is signed, when it is placed at a large office, although on further investigation, the company might wish to get off. In that case, they notify the assured or his broker, that they have decided not to issue the policy, and the binder is taken up, and the owner places his insurance somewhere else.

Q. How, and by whom does the company act in determining whether or not they wish to continue them on this risk for which the binder is issued? A. That practice varies in the different companies. In some companies one officer attends to that, and in some another.

Q. Well, commonly? A. Well, if it was a risk that did not present any special feature, in a large city what they call the counter man, or the daily examiner, will reach conclusion. If it is uncertain, it will be referred to a special officer in the company who decides doubtful points.

Q. After the agent has issued the binder, then what is the process of getting that insurance to the company? How does the agent do that? What does he use? A. The agent uses what is known as a daily report. It is a blank which the company provides on which he sends information with regard to any risks he may write. I have a copy of that daily report. (Witness hands paper to counsel).

Q. This is the form that is in general use throughout the State? A. Substantially. It varies with the various companies, but the difference is not material. The main thing is that this daily report is what the agent uses in describing to his company the various risks.

(Paper received in evidence and marked as Exhibit F).

Q. What other reports do the local agents make, if any, on that risk? A. Unless the company writes them for further information, he ordinarily does not make any report, except when he sends his report at the end of the month. He necessarily includes the record of that particular policy in his account.

Q. Who writes the policy? A. In most cases, the local agent.

Q. How long does it take in a city of this size, for instance, for a policy to be written and delivered? A. In this city it is mostly written at the same office, and this is varied according to the practice of the various companies. Some offices are quicker than others. The insured in this city is amply protected when the binder is issued, so that the issue of the policy is more or less a matter of detail.

Q. How is it ordinarily in the smaller towns where the binder is not in use? A. It would be difficult to answer that with exactness. It is supposed to be written up and delivered forthwith. Some times it will be two or three days in some cases before it is delivered, and sometimes more time elapses.

Q. So that on the policy issued in the smaller places there is always a chance of a dispute to arise between the agents and the

insured, as to whether there was a veritable contract made? A. There is a possibility of it, yes, sir.

Q. What is the practice of the company in advising their local agents as to the issuance of policies? A. The instructions are to issue them at once.

Q. They are to be delivered either the next day, or the very next day thereafter? A. They should be.

Q. Does the local agent have anything to do with the reporting of losses? A. Yes, he is supposed to report losses on blanks that are furnished him for that purpose. I have a copy of the form of blank which is used for that purpose.

Mr. HURRELL: I offer this paper in evidence.

(Paper received in evidence and marked Exhibit No. G).

Q. Does the local agent have any other duties besides writing the policies and reporting the losses? A. He has to collect the premium from the insured, and must remit it.

Q. What is the rule in this State, how long does the assured have to pay that premium? A. The companies do not concern themselves with what; they look to the agent whether he has collected or not.

Q. There is a uniform practice? A. In New York city there is, yes, sir.

Q. What is that practice? A. That practice is, it must be paid within ten days after the second succeeding month. I think this usually amounts to about forty days, as a rule.

Q. Have you knowledge of the rule in general use in the State at large? A. I don't think there is any rule. The general practice of companies is to require their premiums to be remitted for in sixty days. The law allows the companies to take credit as an asset for all uncollected premiums; not more than ninety days due.

Q. The local agent is also used, is he not, in small losses as an adjuster of the company? A. He is; yes, sir. He is also expected to exercise general supervision over the companies' interests, and to cancel policies where he finds that the risks have become hazardous, or where some moral hazard has appeared.

Q. Is the office of the local agent equipped with adequate inspection facilities, so that the inspection of the local agent amounts

to anything? A. Yes, it does; it amounts to a good deal. The agent is expected to know the physical characteristics of a risk that he is underwriting. But that is supplemented by the inspectors sent out by the company, by the inspection that each company makes.

Q. Is it your experience with the local agents that they generally perform their duties with fair fidelity in that regard? A. I think they do.

Q. What is the procedure at the home office when the daily report comes in, referring to the risk written? A. The first thing done is to make a line entry on the company's register; after that the blank is taken up for consideration with regard to its underwriting aspects. The first thing generally done in an office is to put the commercial rating of the assured on the daily report, if he is rated in the commercial agency. In some cases, they may ask the commercial agencies for a special report. Then the risk is mapped. Every company has a map of every place in which they do business. These maps are furnished by the Sanborn Map Company, who make a business of it. I have a few specimen pages here. These are in large bound volumes. These particular pages are separate for convenience sake. I have two of New York City here. There is a New York block, (indicating). This is a New York block in the dry goods district. Brown indicates superior construction. Red is brick. Where they have sprinklers they are marked "S." Where they have yellow it is a frame construction. This is a concrete and steel frame, (indicating). The scale is fifty feet to the inch.

Senator WAGNER: How do you determine the risk?

The WITNESS: We have to take a great many things into consideration. We have to take the area of exposure. For instance (indicating) there is a building exposed by a stable. The criss-cross means a stable. There are wells there through which the fire could easily communicate to that building. Here is a frame building which is exposed. Here is the height of the building, how divided, and how occupied. We also show whether it has sprinklers. The material of the roof is shown, whether it is of shingle or tin, as the case may be.

Senator WAGNER: Where does it show the stories?

The WITNESS: Here, (indicating), 4-B shows three stories and a basement.

mean?

The WITNESS: D generally stands for dwelling, and S-D probably for single dwelling. That is New York. Here is something outside of New York. This is Jamestown. There are a number of manufacturing risks, specially hazardous and frame. This shows that it has a boiler house which is part of the building; it is not off to one side. It would be if it were a better risk.

Q. This is an accurate map in every instance, is it drawn exactly?

A. It is drawn exactly from actual surveys on the spot.

Q. That is the kind of map Mr. Brown referred to this morning that the Sanborn Map Company gets up? A. Yes, sir. That is Elmira (indicating). There is a river. These buildings here are not approachable except on the river side. They are all of frame. If a fire were to start, it would run quickly along and take all of the buildings. There is no way of getting at it.

Q. Except by a fire boat? A. Well, I don't think they have one there. This is a part of Buffalo (indicating), the frame section of Buffalo, that is all frame.

Q. Is there anything else you wish to call attention to in reference to this? A. Not in reference to the maps, I think, except that all companies who undertake to do the business at all intelligently have a map, if they have an agency where they write insurance.

Q. Do these maps show the character of construction that the towns have? A. Yes.

Q. How? A. On the first page of the volume.

Q. That is where the city is mapped out as a whole? A. Yes, sir.

Q. Do you know anything about the expense of those maps to the companies? A. Well, I couldn't recollect what the initial expense would be, but my recollection is that our office, for places where they made new maps, and for corrections on the old maps, expends, say, six to seven thousand dollars a year, for corrections, and where they are revised volumes gotten out, and for new volumes, where they are got out absolutely new, the initial expense is very large, but what it was exactly, I don't remember.

Q. You wouldn't venture an opinion of what it would cost a company that is writing business in ten or more States, you wouldn't

venture an opinion as to what it would cost such a company to equip their offices? A. I think those bound volumes run about fifty dollars a volume, one or more, it depends on the size of the city. In New York, if I am not mistaken, there are twenty volumes.

Q. Referring once more to the local agent. The local agent acts in a somewhat dual capacity? A. He does.

Q. He represents the company, and he is supposed to look after the interests of the insured? A. Yes, and he does, because the insured is his customer.

Q. Does that interfere with his duties to the company, looking after the insured? A. Not necessarily; it makes his position a delicate one sometimes.

Q. And it is a fact also, is it not, that the local agent is an agent for a number of companies at the same time? A. Yes, sir.

Q. And does that affect his placing that business as between the company? A. Well, a great many considerations probably would enter into that. He would represent probably some very strong companies, and some other companies probably not so strong. He might be influenced by a great many considerations. He might deal with a man who would not have anything to do with any but a good strong company. He might deal with a man who left everything to him, and he might exercise some option. The matter of commission might also cut some figure.

Q. The commission in the various parts of the country, as to the various companies, is usually the same, is it not? A. No.

Q. Well, what is the difference? A. Well, the bulk of the foremost companies allow in the East, except in a few separate localities, fifteen per cent. But there are a lot of other companies that allow more, and they are all in the same agencies.

Q. Does that affect the agent's mind in placing his business around among the companies? A. Naturally, it tends to influence him to give the business where he can make the most. I don't mean to say that he would do that to sacrifice the assured's interests, but other things being equal, the natural tendency, of course, is to give it where he can get the most commission.

Q. The companies that belong to any one organization are the ones that you speak of as graded companies? A. There are certain companies that are graded and do not pay more than fifteen per cent. commission.

Q. In any of the company organizations, are there companies that pay one rate, and other companies that pay another? A. Outside of New York City; yes.

Q. They do? A. Yes.

Q. Do you recall any of the company organizations where that rule prevails? A. They have no rule.

Q. Take the Eastern Union; what is the Eastern Union? A. The Eastern Union is an association of companies bound to observe the fifteen per cent. rule.

Q. They do observe it? A. They do observe it.

Q. They are all companies that are in the Eastern Union? A. Yes, sir.

Q. You distinguish between the companies as to union and non-union companies? A. Yes, sir.

Q. Are there a lot of non-union companies, for instance, that always belonged to the National Board of Fire Underwriters? A. Yes, but that has nothing to do with our rates.

Q. In connection with the New York Board of Fire Underwriters? A. Yes, sir; but that has nothing to do with the rates of commission.

Q. Take the companies that belong to the New York Fire Insurance Exchange: Compare them with those companies of the Eastern Union. Do they all belong? A. No; they don't. But the New York Fire Insurance Exchange does limit commissions, or does limit brokerages.

Q. So that all those companies follow a uniform scale? A. In New York City; yes, sir.

Q. In the first place, how many cities does the Eastern Union cover? A. They cover all the Eastern and Southern States.

Q. Can you give an estimate of the number of companies known as non-union companies, doing business in that territory? A. Oh, there must be more than twice as many non-union as union, I suppose.

Q. So that, as a matter of fact, you could not say that there was uniformity in the payment of commissions? A. Most of them belong to the union, and keep down the price of the business. They do the bulk of the business, not the majority of the companies in America, but they do the larger part of the business, I believe.

Q. So that the companies doing the bulk of the business act in harmony on commissions? A. I think they do; those who do the majority of the business; yes, sir.

Q. Do they allow the agents to accept the non-union companies as underwriters? Do they allow the agents to write for them and for non-union companies, too? A. We have placed no check on them at all. We have not touched the subject.

Q. I understand they have not taken any action on that subject? A. No.

Q. Is there any persuasion brought to bear at all to make the agents who represent the underwriters you speak of exclude men who will not observe that scale of commissions? A. I do not think so, because I think they recognize that any representations made would have to be effected.

Q. How about the Western Union? A. The Western Union had a scale. Graded commissions.

Q. Do the same companies belong to the Eastern Union that belong to the Western Union? A. No.

Q. Do the companies that do belong to the Western Union allow their agents also to write for non-union companies in that territory? A. It depends on circumstances. If the agent will not accept from anybody else higher commissions. I will put it in another way. The rate of commission in the West for the union company is fifteen per cent., but in cases where the agent will represent only those companies who belong to the union, and thereby limit his commission, they will pay him a graded commission.

Q. What is that graded commission? A. Fifteen per cent. on special and hazardous and mercantile stocks, which constitute the bulk of the whole business; and twenty per cent. on broker's mercantile business; twenty-five per cent. on dwellings, schoolhouses and churches.

Q. Do you know, without saying that you know it accurately in all respects, do you know what the tendency is among the agents or representatives of Western Union companies, whether the tendency is to exclude or include? A. The two classes are generally separate in that field.

Q. Have they done it in the Eastern Union? A. Yes.

Q. But not in the Western Union? A. No.

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